

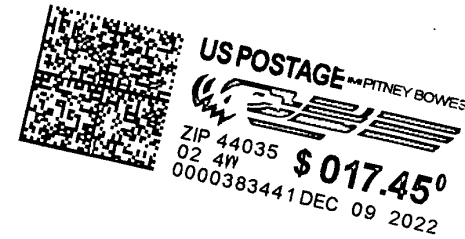


TOM ORLANDO
Lorain County Clerk of Courts
225 Court Street - First Floor
Elyria, OH 44035-5512

CERTIFIED MAIL



9414 7266 9904 2202 7646 31



22CV207621
METLIFE SERVICES AND SOLUTIONS,
C/O CT CORPORATION SYSTEM
4400 EASTON COMMONS WAY STE 125
COLUMBUS OH 43219





LORAIN COUNTY COURT OF COMMON PLEAS

LORAIN COUNTY JUSTICE CENTER
225 COURT STREET
ELYRIA, OHIO 44035

YUFEI LI
110 CYPRESS ST
OBERLIN, OH 44074

CASE NO. 22CV207621

VS.

TO: METLIFE SERVICES AND SOLUTIONS, LLC
C/O CT CORPORATION SYSTEM
4400 EASTON COMMONS WAY STE 125
COLUMBUS, OH 43219

S U M M O N S O N C O M P L A I N T

You have been named defendant in a complaint filed in Lorain County Court of Common Pleas by plaintiff(s):

YUFEI LI
110 CYPRESS ST
OBERLIN, OH 44074

A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is:

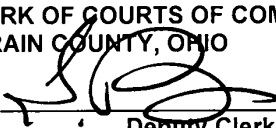
J. M MURRAY
BERKMAN, GORDON, MURRAY & DE VAN
55 PUBLIC SQUARE, SUITE 2200
CLEVELAND, OH 441131949

You are hereby summoned and required to serve a copy of your answer to the complaint upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, within **TWENTY-EIGHT (28) DAYS** after service of this summons on you, exclusive of the day you receive it. Your answer must **ALSO** be filed with this Court within three (3) days after you serve, (delivered or by mail), a copy of your answer on the plaintiff's attorney.

If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the complaint.

TOM ORLANDO
CLERK OF COURTS OF COMMON PLEAS
LORAIN COUNTY, OHIO

12/8/2022

BY: 
Deputy Clerk

22CV207621

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY

YUFEI LI,
110 Cypress Street
Oberlin, OH 44074

Plaintiff,

- vs -

METROPOLITAN LIFE INSURANCE
COMPANY
200 Park Avenue
New York, NY 10166

and

OFFICE OF FEDERAL EMPLOYEES'
GROUP LIFE INSURANCE
C/O Metropolitan Life Insurance
200 Park Avenue
New York, NY 10166

and

METLIFE SERVICES AND SOLUTIONS,
LLC
C/O CT Corporation System
4400 Easton Commons Way STE 125
Columbus, OH 43219

Defendants.

Case Number:

22CV207621

Judge:

JUDGE CHRISTOPHER ROTHGERY

COMPLAINT FOR DAMAGES
(Jury Demand Endorsed Hereon)

-INTRODUCTION-

1. This is a breach of contract action being brought by the surviving spouse and the beneficiary of her deceased husband's life insurance policy against the insurer that denied her claim to collect the proceeds of the accidental death benefits of that policy.

- PARTIES AND BACKGROUND -

2. Plaintiff Yufei Li is a resident of the City of Oberlin in the County of Lorain, Ohio. Her

late husband, Floyd Truskot, was a federal employee working for NASA and paid for life insurance and accidental death benefits under the Federal Employees Group Life Insurance Program (hereafter "FEGLI"). Plaintiff is the designated beneficiary of those benefits.

3. The Federal Employees' Group Life Insurance Act of 1954 (FEGLIA), 5 U.S.C. 8701 *et seq.*, establishes a life insurance program for federal employees.
4. Pursuant to the authority granted to it by FEGLIA, the Office of Personnel Management (OPM) entered into a life insurance contract with Defendant Metropolitan Life Insurance Company ("Metlife"). *See* 5 U.S.C. 8709; 5 C.F.R. 870.102 (2020).
5. Defendant MetLife is headquartered in the State of New York and conducts and transacts business in the State of Ohio. It has an office called Office of Federal Employees' Group Life Insurance (OFEGLI).
6. Defendant OFEGLI adjudicates claims under the FEGLI Program.
7. Defendant Metlife Services and Solutions, LLC is a Delaware Corporation that conducts and transacts business in the State of Ohio. It also responsible for claims made under the FEGLI Program.
8. Defendant Metlife is contractually obligated to pay claims under the FEGLI Program and federal regulation provides that "any court action to obtain money due from this insurance policy must be taken against the company that issues the policy." 5 CFR 870.102 (2020).
9. Venue is proper in Lorain County pursuant to Ohio R. Civ. P 3(C)(3) and Ohio R. Civ. P. 3(C)(6) as Defendants conducted activity in Lorain County giving rise to Plaintiff's claim for relief and it is also the county in which all or part of the claim for relief arose.

– FACTS RELEVANT TO PLAINTIFF’S CLAIMS–

10. Plaintiff’s husband, Floyd Truskot, was a federal employee working as a designer at the NASA Glenn Research Center located in Cleveland, OH.
11. As a federal employee, Mr. Truskot paid for life insurance and accidental death benefits under the FEGLI program.
12. Since 1987, Mr. Truskot was paralyzed due to injuries he sustained in a car accident.
13. On April 7, 2021, Mr. Truskot was working from home for NASA when he fell backward out of his wheelchair and struck his head.
14. Mr. Truskot was taken to Mercy Hospital and was diagnosed with an occipital skull fracture and bifrontal subarchnoid hemmorrhages as a result of the fall. He would never return home.
15. Over the next several months, Mr. Truskot was transferred to several different hospitals and his hospitalizations were complicated by seizures, pressure ulcers and respiratory failure.
16. He was eventually placed on comfort care at Select Fairhill, a long term acute care facility, and died on October 5, 2021.
17. The attending physician at Select Fairhill, Dr. Raphael Silver, completed and signed the death certificate.
18. On Floyd Truskot’s death certificate, Dr. Silver listed the immediate cause of death as “respiratory failure” and stated that “intracranial hemorrhage” was the condition “leading to the immediate cause of death.” However, the manner of death on the death certificate was listed as “natural.”

19. Plaintiff submitted a claim for Mr. Truskot's life insurance and accidental death benefits shortly after his death to OFEGLI/Metlife.
20. Under the relevant federal regulation, "accidental death" refers to "the insured's death...that results directly from, and occurs within one year of, a bodily injury caused solely through violent, external, and accidental means." 5 C.F.R. 870.101.
21. On December 9, 2021, Plaintiff received a letter from the OFEGLI/Metlife that while it would remit payment to her for the proceeds of the life insurance policy, her claim for the accidental death benefits was denied.
22. That denial stated, "Floyd Truskot's death certificate does not indicate that the cause of death was an accident. Due to policy exclusions, our office will not be able to approve your claim for the accidental death benefit." That denial letter is attached hereto as Exhibit A.
23. That denial further stated that "Some services in connection with your FEGLI claim payment may be made by Metlife Services and Solutions, LLC. These service arrangements in no way alter Metropolitan Life Insurance Company's obligation to you." *Id.*
24. Plaintiff, through counsel, repeatedly contacted OFEGLI/Metlife and requested a copy of the relevant policy.
25. On March 26, 2022, Plaintiff's counsel received a response from OFEGLI/Metlife. In that response, Defendants stated, "Floyd Truskot's death certificate does not indicate that the cause of death was an accident. Due to policy exclusions, our office will not be able to approve your claim for the accidental death benefit." It also included the same language that some services related to FEGLI Claim payment made by made by

Defendant Metlife Services and Solutions, LLC. That denial is attached hereto as Exhibit B. Defendants did not provide a copy of the policy.

26. On October 12, 2022, Dr. Silver subsequently prepared a supplementary medical certification which amended the cause of death from natural to "accident." Dr. Silver then filed that certification with the local registrar of vital statistics. Ex C, attached hereto.
27. The local registrar then notified the Cuyahoga County Medicin Examiner's Office which conducted an investigation and reviewed Mr. Truskot's medical records.
28. On November 23, 2022, Dr. Joseph Fello from the Cuyahoga County Medical Examiner's Office prepared a revised certificate of death and listed the manner of death as "accident." The immediate cause of death is set forth as "[b]lunt impact to head with a subdural hematoma and traumatic brain injury." The date of injury is set forth as April 7, 2021. Exhibit D, attached hereto.
29. On November 29, 2022, Plaintiff's counsel obtained a copy of the relevant policy through a Freedom of Information Act request. Exhibit E, attached hereto.
30. Plaintiff now brings this action to recover the proceeds of Floyd Truskot's accidental death benefits.

COUNT ONE: BREACH OF CONTRACT

31. Plaintiff incorporates paragraphs 1 through 30 as if fully rewritten herein.
32. Floyd Truskot was insured by a policy of insurance at the time of his death through Defendants that included accidental death benefits.
33. Floyd Truskot suffered an accidental death caused directly from his fall and the injuries he sustained on April 7, 2021.

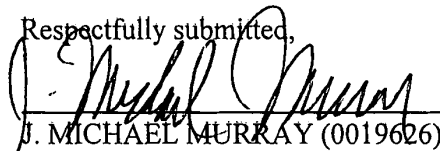
34. The manner and cause of Floyd Truskot's death entitles his beneficiary to the proceeds of his accidental death benefits.
35. Plaintiff Yufei Li is the designated beneficiary of Floyd Truskot's insurance policy.
36. Plaintiff Yufei Li made a claim for the accidental death proceeds of Floyd Truskot's insurance policy.
37. Defendants improperly denied that claim and breached its contractual obligation to Plaintiff Yufei Li.
38. As a direct and proximate result of Defendants' breach, Plaintiff Yufei Li has incurred damages in the amount of \$107,000, along with costs and prejudgement interest from December 9, 2021.

- PRAYER -

WHEREFORE, Plaintiff demands judgment against each Defendant as follows:

- A. Compensatory damages in excess of Twenty-Five Thousand Dollars (\$25,000.00) against Defendants, jointly and severally, as to all claims in this matter;
- B. Recovery of the costs of this action; and
- C. Any other and further relief to which Plaintiff is entitled.

Respectfully submitted,


J. MICHAEL MURRAY (0019626)

jmmurray@bgmdlaw.com

WILLIAM C. LIVINGSTON (0089538)

wlivingston@bgmdlaw.com

BERKMAN, GORDON, MURRAY & DeVAN

55 Public Square, Suite 2200

Cleveland, Ohio 44113-1949

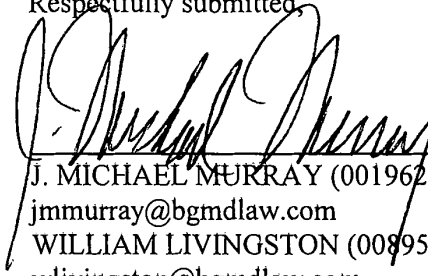
(216) 781-5245 / (216) 781-8207 (Fax)

Attorneys for Plaintiff

Jury Demand

Plaintiffs hereby demand a trial by jury with the maximum number of jurors allowed by law on each and every count, claim and issue so triable.

Respectfully submitted,



J. MICHAEL MURRAY (0019626)

jmmurray@bgmdlaw.com

WILLIAM LIVINGSTON (0089538)

wlivingston@bgmdlaw.com

BERKMAN, GORDON, MURRAY & DeVAN

55 Public Square, Suite 2200

Cleveland, Ohio 44113-1949

(216) 781-5245 / (216) 781-8207 (Fax)

Attorneys for Plaintiffs

**Berkman, Gordon,
Murray & DeVan**

Attorneys and Counselors at Law

55 PUBLIC SQ STE 2200

CLEVELAND OH 44113-1949

216-781-5245



00045002002000000001000000



Office of Federal Employees' Group Life Insurance
PO Box 6080
Scranton, PA 18505-6080



MetLife

Office of Federal Employees' Group Life Insurance
Insured: Floyd Truskot
Claim Number: 20211200734

December 9, 2021

Ms. Yufei Li
110 Cypress Street
Oberlin, Oh 44074

Important information regarding
you accidental death benefits
claim.

Dear Yufei Li,

Why we're contacting you

This letter is regarding the Federal Employees' Group Life Insurance (FEGLI) benefits due to the death of Floyd Truskot.

What you need to know

Payment for the amount listed above is being sent under separate cover.

Floyd Truskot's death certificate does not indicate that the cause of death was an accident. Due to policy exclusions, our office will not be able to approve your claim for the accidental death benefit.

We're here to help

You can reach me by:

- Phone: 315-792-6438
- Fax: 570-558-8659

For more information on FEGLI policies, please visit the Office of Personnel Management's website at:

If I am not available, you may speak with a Customer Service Representative Monday through Friday at 800-633-4542 from 8:30 a.m. to 4:00 p.m., Eastern Time. Please have your claim number available to receive faster service.

Sincerely,

Linda Roberts
Case Management Specialist

Additional Information

Some services in connection with your FEGLI claim payment may be performed by MetLife Services and Solutions, LLC. These service arrangements in no way alter Metropolitan Life Insurance Company's obligation to you.



1 of 1

EXHIBIT A



Office of Federal Employees' Group Life Insurance
PO Box 6080
Scranton, PA 18505-6080



MetLife

Office of Federal Employees' Group Life Insurance
Insured: Floyd Truskot
Claim Number: 20211200734

March 26, 2022

Berkman Gordon Murray Devan
Attn William C Livingston
Client: Yufei Li
55 Public Sq. Ste 2200
Cleveland, Oh 44113
Cleveland, OH 44113



Important information regarding
you accidental death benefits
claim.

Dear Berkman Gordon Murray Devan Attn William C Livingston,

Why we're contacting you

This letter is regarding the Federal Employees' Group Life Insurance (FEGLI) benefits due to the death of Floyd Truskot.

What you need to know

We have received your letter dated February 09, 2022 advising you are contesting the denial for the Accidental death benefits.

Floyd Truskot's death certificate does not indicate that the cause of death was an accident. Due to policy exclusions, our office will not be able to approve your claim for the accidental death benefit.

We're here to help

You can reach me by:

- Phone: 315-792-5843



For more information on FEGLI
policies, please visit the Office of
Personnel Management's website
at: opm.gov/life

If I am not available, you may speak with a Customer Service Representative Monday through Friday at 800-633-4542 from 8:30 a.m. to 4:00 p.m., Eastern Time. Please have your claim number available to receive faster service.

Sincerely,

Chandaravy Mills
Case Management Specialist

Additional Information

Some services in connection with your FEGLI claim payment may be performed by MetLife Services and Solutions, LLC. These service arrangements in no way alter Metropolitan Life Insurance Company's obligation to you.



ACTION: Final

EXISTING
Appendix

DATE: 12/20/2010 10:21 AM

Reg. Dist. No. _____

3701-5-080 Department of Health
VITAL STATISTICS

State File No. _____

Registrar's No. _____

Supplementary Medical Certification

Bar Code Number here

Name of Deceased Floyd J. Truskot			
Place of Death Cleveland, Ohio		Date of Death 10/5/2021	
23. Registrar's Signature		24. Date Filed	
25a. Certifier (Check Only One)		<input checked="" type="checkbox"/> Certifying Physician To the best of my knowledge, death occurred at the time, date, and place; and due to the cause(s) and manner stated. <input type="checkbox"/> Coroner On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place; and due to the cause(s) and manner stated.	
25b. Time of Death 13:41	25c. Date Pronounced Dead (Mo/Day/Year) 10/5/2021	25d. Was Case referred to Coroner? No	
25e. Signature and Title of Certifier R Silver MD		25f. License number 35.124354	25g. Date Signed 10/12/2022
27. Name (First, Middle, Last) and Address of Person who Completed Cause of Death Raphael Silver MD, 11900 Fairhill Rd, Cleveland, OH 44120			
28. Part I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Type or print in permanent black ink.			
Immediate Cause (Final disease or condition resulting in death)	a. Respiratory Failure		Approximate Interval Between Onset and Death 6 months
Sequentially list conditions, if any, leading to the immediate cause.	b. Due to (or as Consequence of) Intracranial Hemorrhage		6 months
Enter Underlying Cause Last (Disease or injury that initiated events resulting in a death)	c. Due to (or as Consequence of) Head Trauma		6 months
	d. Due to (or as Consequence of) Fall from a wheelchair		6 months
Part II. Other Significant Conditions contributing to death but not resulting in the underlying cause given in Part I. Acute Kidney Injury		29a. Was an Autopsy Performed? No	29b. Were Autopsy Findings Available Prior to completion of Cause of Death? NA
30. Did Tobacco Use Contribute to Death? No	31. If Female NA	32. Manner of Death Accident	
33a. Date Of Injury (Mo/Day/Year) 4/7/2021	33b. Time of Injury about 1:59pm	33c. Place of Injury (e.g., Decedent's home, construction site, restaurant, wooded area) Decedent's Home	33d. Injury at Work? No
33e. Location of Injury (Street and Number or Rural Route Number, City or Town, State) 110 Cypress St Oberlin, OH 44074			
33f. Describe how Injury Occurred: Accidental fall from a wheelchair		33g. If Transportation Injury, Specify:	

HEA 3753
Rev. 01/07THIS SUPPLEMENTARY CERTIFICATE IS TO BE COMPLETED BY THE ATTENDING PHYSICIAN
OR CORONER AND FILED WITH LOCAL REGISTRAR OF VITAL STATISTICS
Required by section 3703.27 of the Ohio Revised Code

Bar Code here

APPENDIX E
3701-5-02

EXHIBIT A

Primary Reg. Dist. No. 1801

Registrar's No. 1800-2021012217

Ohio Department of Health
VITAL STATISTICS
CERTIFICATE OF DEATH

State File No. - 2021106603

DECEDENT	1. Decedent's Legal Name (First, Middle, Last, Suffix) (Include AKA's if any)						2. Sex		3. Date of Death (Mo/Day/Year)	
	FLOYD J TRUSKOT						MALE		OCTOBER 05, 2021	
	4. Social Security Number		5a. Age (Years)		5b. Under 1 Year Months		5c. Under 1 day Hours		6. Date of Birth (Mo/Day/Year)	
	274-64-7335		59						OCTOBER 20, 1961	
DISPOSITION	7. Birthplace (City and State or Foreign Country)						8. City or Town			
	LORAIN, OHIO						OBERLIN			
	8a. Residence State						8b. County			
	OHIO						LORAIN			
	8d. Street Address and Zip Code						9. Ever in US Armed Forces?			
	110 CYPRESS ST. 44074						NO			
	10. Marital Status at Time of Death						11. Surviving Spouse's Name (If wife, give name prior to first marriage)			
	MARRIED						YUFEI LI			
	12. Decedent's Education						13. Decedent of Hispanic Origin			
	BACHELORS DEGREE (E.G., BA, AB, BS)						NO			
CERTIFIER	14. Decedent's Race						15. Father's Name			
	WHITE						FRANK TRUSKOT SR			
	16. Mother's Name (prior to first marriage)						17a. Informant's Name			
	FLORENCE NOVAK						YUFEI LI			
	17b. Relationship to Decedent						17c. Mailing Address (Street and Number, City, State, Zip Code)			
	WIFE						110 CYPRESS ST.			
	18a. Place of Death						18b. Facility Name (If not Institution, give street & number)			
	HOSPITAL - INPATIENT						SELECT SPECIALTY HOSPITAL - CLEVELAND			
	18c. City or Town, State and Zip Code						18d. County of Death			
	CLEVELAND, OH 44120						CUYAHOGA			
CAUSE OF DEATH	19. Funeral Service Licensee or Other Agent						20. License Number (of licensee)			
	TAD G COWLING						008651			
	21. Name and Complete Address of Funeral Facility						22. Method and Place of Disposition			
	COWLING FUNERAL HOME INC						CREMATION - A F F S CO, LORAIN, OH			
	228 S MAIN ST						OBERLIN, OH 44074			
	23. Local Registrar						24. Date Filed (Month/Day/Year)			
	ANDREA KACINARI						OCTOBER 07, 2021			
	26a. Certifier (Check only one) <input type="checkbox"/> Certifying Physician: To the best of my knowledge, death occurred at the time, date, and place; and due to the cause(s) and manner stated.									
	<input checked="" type="checkbox"/> Coroner or Medical Examiner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place; and due to the cause(s) and manner stated.									
	26b. Time of Death						26c. Date Pronounced Dead (Month/Day/Year)		26d. Was Case Referred to Medical Examiner or Coroner?	
13:41						OCTOBER 05, 2021		NO		
26e. Certifier Name and Title						26f. License number		26g. Date Signed (Month/Day/Year)		
JOSEPH FELO DO						34.006746		NOVEMBER 23, 2022		
27. Name and Address of Person who Completed Cause of Death										
JOSEPH FELO, 11001 CEDAR AVE, CLEVELAND, OH 44106										
28. Part I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Type or print in permanent blue or black ink.										
Immediate Cause: (Final disease or condition resulting in death)						a. BLUNT IMPACT TO HEAD WITH SUBDURAL HEMATOMA AND TRAUMATIC BRAIN INJURY		Approximate Interval: Onset and Death		
								UNKNOWN		
Sequentially list conditions, if any, leading to immediate cause.						b. Due to (or as Consequence of)				
						c. Due to (or as Consequence of)				
Enter Underlying Cause (Disease or injury that initiated events resulting in a death)						d. Due to (or as Consequence of)				
Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.										

**FEDERAL EMPLOYEES'
GROUP LIFE INSURANCE PROGRAM**

STANDARD CONTRACT

FOR

2012



EXHIBIT A

CONTRACT FOR FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

CONTRACT NO: 17000-G
EFFECTIVE: October 1, 2012

BETWEEN: The United States Office of Personnel Management
hereinafter called OPM or the Government

Address: 1900 E Street, NW
Washington, DC 20415-3640

AND

CONTRACTOR: Metropolitan Life Insurance Company
hereinafter also called the Contractor

Address: 200 Park Avenue
New York, NY 10166

In consideration of payment by OPM of Premiums as described in Part III hereof, Contractor agrees to perform all of the services set forth in this Contract.

FOR THE CONTRACTOR

FOR THE GOVERNMENT

[Redacted]

act

(type or print)

[Redacted]

Title

[Redacted]

Signature

[Redacted]

(type or print)

[Redacted]

[Redacted]

Sept 25, 2012
Date signed

Sept. 26, 2012
Date signed

FEGLI-2012

EXHIBIT A

TABLE OF CONTENTS

This Contract consists of the cover page, the table of contents, and the provisions and clauses included in PARTS I through IV and Appendices A and B.

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- 1.3 APPLICABILITY OF THE ACT AND REGULATIONS
- 1.4 INFORMATION TO BE FURNISHED; DETERMINATION BY THE GOVERNMENT
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- 1.22 SUBCONTRACTS (LIFAR 2152.244-70)
- 1.23 QUALITY ASSURANCE REQUIREMENTS (LIFAR 2152.246-70)
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PART IV-STANDARD FAR CLAUSES

This Contract shall include all of the following standard clauses required by the Federal Acquisition Regulation (FAR) or Life Insurance Federal Acquisition Regulation (LIFAR).

- 4.1 DEFINITIONS
- 4.2 GRATUITIES

- 4.3 COVENANT AGAINST CONTINGENT FEES
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APPENDIX A

FEGLI DELAYED INTEREST RATE

APPENDIX B

CONTRACTOR'S KEY PERSONNEL

PART I-GENERAL PROVISIONS

SECTION 1.1

DEFINITION OF TERMS (JUN 2012)

For the purpose of this Contract, the following definitions apply:

Accidental Death and Dismemberment (AD&D) – Shall have the meaning described in Section 2.8.

AD&D Insurance – Basic Accidental Death and Dismemberment Insurance and Option A (Standard Optional) Accidental Death and Dismemberment Insurance, as applicable.

Act–The Federal Employees' Group Life Insurance Act, as amended, Chapter 87 of Title 5, United States Code.

Annual Rate of Basic Pay – An insured employee's annual pay as defined in Regulations.

Basic Insurance Amount (BIA) – The amount of insurance coverage equal to the greater of: a) an employee's actual Annual Rate of Basic Pay (rounded up to the next \$1,000), plus \$2,000, or b) \$10,000.

Beneficiary –An individual, corporation, trust or other entity that receives, or is eligible to receive FEGLI benefits when an Insured Person dies.

Benefits – The total dollar amount of life insurance, plus interest, if any, payable upon the Insured Person's death or certified terminal illness or dismemberment. For Option C, it is the total dollar amount, plus interest, if any, payable upon the death of the Insured Person's spouse and/or eligible dependent child(ren).

Certified Death Certificate – An original official document, judgment, or record of death or a copy that is attested to as an accurate and complete reproduction of the original document by a public official, or other authorized person having charge of the original document.

Contract–This entire document, as described in the *Table of Contents*, consisting of the agreement between OPM and the Contractor (Group Policy No. 17000-G).

Contract Year – The 12-month period beginning October 1 and continuing through the following September 30.

Contracting Officer– The individual(s) authorized by OPM to make contract decisions for the FEGLI Program.

Contractor –An insurance company providing life insurance benefits under contract, as specified by 5 U.S.C. chapter 87.

Contractor Delayed Settlement Interest Rate (Contractor DSI Rate) – The rate of interest that the Contractor sets and uses to calculate delayed settlement interest on claims made under its non-FEGLI group life insurance policies, where state law requires that interest be paid, but does not require the Contractor to pay a rate different from the Contractor DSI Rate.

Court Order– (1) A court decree of divorce, annulment, or legal separation; or (2) A court-approved property settlement agreement relating to a court decree of divorce, annulment, or legal separation--that requires benefits to be paid to a specific person or persons and is received in the employing office before the insured dies.

Descendant –As used in the statutory order of precedence, 5 U.S.C. § 8705, "descendant" shall include the recognized natural child of an Insured Person's child or grandchild, but only if such

child meets the definition of "recognized natural child" in 5 CFR 870.101 or any successor Regulation.

Employee— A person who is considered to be an eligible employee, as defined in the Act and Regulations.

Erroneous Payment – A payment made by the Contractor in an incorrect amount, or to a person not entitled to receive such payment, or otherwise without authority under the Act, Regulations or this Contract.

Extra Benefit—The Extra Benefit for Insured Persons under age 45. The Extra Benefit doubles the individual's Basic Insurance Amount (BIA) if the individual is age 35 or younger. Beginning on the individual's 36th birthday, the Extra Benefit decreases at the rate of 10% each year until at age 45, the Extra Benefit ends. Any decrease in the amount of the Extra Benefit due to an individual's age is effective when the individual reaches that age.

FEGLI –Federal Employees' Group Life Insurance Program.

FEGLI Delayed Settlement Interest Rate (FEGLI DSI Rate) – The rate of interest that the Contracting Officer approves and communicates to the Insurance Company. The current rate is specified in Appendix A.

Government Agencies – Any Government agencies and other entities entitled by law to participate in the FEGLI Program pursuant to the Act and Regulations.

Insurance – Basic life insurance; Option A (Standard Optional) life insurance; Option B (Additional Optional) life insurance; Option C (Family Optional) life insurance; and Accidental Death and Dismemberment insurance, as defined in 5 CFR Part 870.

Insurance in Force – The dollar amount of life insurance payable in respect of the death of an Insured Person or Insured Person's spouse and/or eligible dependent child(ren) as certified by the Government Agency or OPM. The amount is determined by the type of coverage and number of multiples, if applicable, elected by the Insured Person. The Insured Person's age, Annual Rate of Basic Pay (minus any post-65 reductions if applicable) and the inclusion of any Accidental Death and Dismemberment are considered in the determination of the dollar amount.

Insured Person – An Employee (who has not declined FEGLI coverage pursuant to the Act and Regulations), annuitant (as defined in Regulations), compensationner (as defined in Regulations), or family member (as defined in the Act). Absent applicable Federal law, the definition of spouse for purposes of defining a family member will be determined in accordance with applicable state law.

LIFAR – Federal Employees' Group Life Insurance Federal Acquisition Regulation, 48 CFR chapter 21.

Living Benefits – Pre-death payment of all or a portion of an eligible Insured Person's Basic Insurance Amount (BIA) pursuant to the Act and Regulations.

LOC – Letter of Credit, the method by which OPM shall pay Premiums to the Contractor.

OPM – The U.S. Office of Personnel Management.

Performance Standards –Procedures and outcomes required of the Contractor or Contractor's Representative to provide services under the FEGLI contract or in support of quality assurance requirements of the FEGLI contract.

Personally Identifiable Information (PII) – information in the Contractor's possession (paper or electronic) that can be used to discern or trace a person's identity such as names, addresses, social security numbers, or email address; and that alone, or combined with other information, can be used to compromise the integrity of records relating to a person, by permitting access to unauthorized disclosure of these records. For example, a name alone would generally not

constitute PII, but when linked to a social security number, date of birth, or mother's maiden name, it constitutes PII

Premium – an amount intended to cover the estimated annual benefits and administrative costs plus a fixed service or risk charge, made available to the Contractor in 12 equal installments.

Regulations –(1) The Federal Employees' Group Life Insurance Regulations, part 870, title 5, Code of Federal Regulations; and (2) the Federal Acquisition Regulation (FAR) and LIFAR, chapters 1 and 21 of title 48, Code of Federal Regulations.

Special Reserve – shall have the meaning of Special Contingency Reserve as described in section 8712 of Chapter 87 of Title 5, United States Code or any successor law.

SECTION 1.2

ENTIRE CONTRACT; MODIFICATIONS (AUG 1954)

(a) This document, as described in the *Table of Contents*, constitutes the entire contract between the parties with respect to matters contemplated by this Contract. No oral statement of any person will modify or otherwise affect the terms, conditions, or specifications stated in this Contract.

(b) With the exception of revisions to the Performance Standards described in *Section 1.9 FEGLI Performance Standards*, all modifications to this Contract must be made in writing and executed by a Contracting Officer and the Contractor's authorized representative acting within the scope of his or her authority.

SECTION 1.3

APPLICABILITY OF THE ACT AND REGULATIONS (JUN 2012)

(a) The applicable provisions of (1) chapter 87 of title 5, United States Code; (2) OPM's Regulations as contained in part 870, title 5 of the Code of Federal Regulations; and (3) chapters 1 and 21 of title 48 of the Code of Federal Regulations; and (4) the Patient Protection and Affordable Care Act (ACA), which incorporated S. 17090, the Indian Health Care Improvement Reauthorization and Extension Act of 2009 (IHCIREA) constitute a part of this Contract as if fully set forth herein, and the other provisions of the contract shall be construed so as to comply therewith.

(b) If the Act and/or Regulations are changed in a manner which would increase the Contractor's liability under this Contract, the Contracting Officer will make an equitable adjustment in accordance with the changes clause, *Section 1.21, Changes*.

(c) Any inconsistency in this Contract shall be resolved by giving precedence in the following descending order: The Act, the Regulations in part 870, title 5, Code of Federal Regulations; and the Regulations in chapters 1 and 21, title 48, Code of Federal Regulations; and this Contract.

(d) The Act, Regulations, and this Contract supersede and preempt any law or regulation of any State which relates to the provision and administration of group life insurance, including but not limited to the payment of benefits or any other matter which relates to the Contractor's review, processing, or administration of a claim.

SECTION 1.4

INFORMATION TO BE FURNISHED; DETERMINATION BY THE GOVERNMENT (AUG 1954)

- (a) OPM will furnish or cause to be furnished to the Contractor such information regarding Insured Persons as the Contractor reasonably determines is necessary to carry out its obligations under this Contract.
- (b) OPM agrees to provide such reasonable reports as may be requested by the Contractor that have a bearing on its obligations under this Contract.
- (c) For the purposes of this Contract, any decision by the employing Government Agency or OPM with respect to the following matters will be conclusive:
 - (1) The classification of any person as being an "Insured Person" or "Employee";
 - (2) The fact and date of:
 - (i) Separation of an Employee from service,
 - (ii) A pay status or nonpay status of an Employee,
 - (iii) Cessation of an Employee's classification as an Employee;
 - (3) The Annual Rate of Basic Pay of an Employee as of any date;
 - (4) The conditions and specifications relating to continuation of insurance, as specified in *Section 2.9, Continuation of Coverage after Retirement or During Receipt of Compensation*; or
 - (5) The effective dates of an Employee's Insurance.
- (d) OPM agrees that any liability incurred by the Contractor in reliance on: (i) the decisions referenced in subsection (c); or (ii) any information provided pursuant to subsections (a) or (b); of this Section will be a valid charge against the Contract.

SECTION 1.5

PERSONALLY IDENTIFIABLE INFORMATION; PROCEDURES FOR REPORTING A SECURITY BREACH (JUN 2012)

- (a) The Contractor agrees to keep all Personally Identifiable Information (PII) confidential as specified in *Section 1.20 Confidentiality of Records*.
- (b) OPM has a policy protecting, and when appropriate, restricting sending, copying or moving PII from the OPM network. Therefore, the Contractor must send PII via a secure email system or it must be sent as an encrypted attachment.
- (c) If there is a breach of PII of which the Contractor becomes aware, the Contractor agrees to promptly notify the Contracting Officer of the breach.
 - (1) A breach of PII, data, system access, etc., includes loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or unauthorized access of PII whether physical or electronic. As an agency, OPM is required to immediately report all potential security and data breaches – whether they involve paper documents or electronic information. In order to meet this responsibility, OPM has established a new internal procedure for reporting the loss or possible compromise of any data, and this clause conforms to that procedure.
 - (2) The Contractor shall report any breach or potential breach to the OPM Situation Room and the Contracting Officer within 30 minutes of becoming aware of the risk-regardless of the time or day of the week. Breaches should be reported, even if it is believed the breach is limited, small, or insignificant. OPM's IT security experts will determine when a breach needs additional focus and attention. The OPM Situation Room is available 24 hours per day, 365 days.

per year. Report the breach to the OPM Situation Room and the Contracting Officer either by phone or by e-mail; however, be sure NOT to include PII in the e-mail.

(i) The Contractor must report a breach or potential breach of PII to the OPM Situation Room at:

sitroom@opm.gov

(202) 418-0111

(202) 606-0624 Fax

(ii) The Contracting Officer should be copied or notified at:

FEGLIcontractingofficer@opm.gov

(202) 606-1234

(202) 606-4640 Fax

(d) The Contractor shall take all steps reasonably necessary to ensure that any of its contracting entities that electronically collect, create, receive, store, or transmit PII; or physically handle or transfer PII, provide for the privacy protection and security of that information.

(e) All business agreements and subcontracts entered into by the Contractor using or receiving PII shall state that if there is an unlawful breach of PII, the party contracting with the Contractor shall notify the Contractor so the Contractor can notify the Contracting Officer of the breach. The Contractor may be required to terminate any contract with any vendor who fails to notify the Contractor of an unlawful breach of PII.

SECTION 1.6

INCONTESTABILITY (AUG 1954)

Incontestability applies as specified in the Act and Regulations.

SECTION 1.7

STATISTICS AND SPECIAL STUDIES (JUN 2012)

(a) The Contractor will maintain or cause to be maintained statistical records of its operations under the Contract and will furnish OPM, in the form prescribed by the Contracting Officer, the statistical reports reasonably necessary for OPM to carry out its functions under the Act, Regulations and this Contract.

(b) The Contractor will furnish the routine reports in the required number of copies in a format determined by the Contracting Officer to the addresses specified by OPM.

(c) The Contractor will furnish such other additional data and reports of special studies as the Contracting Officer may, from time to time, reasonably request for the purpose of carrying out its functions under the Act. The Contractor will be reimbursed for such additional data and reports in accordance with *Section 1.21, Changes*. Costs incurred by the Contractor in connection with the collection, maintenance, and furnishing of such additional data and reports will be reimbursed outside the administrative expense ceiling if the Contractor's administrative expenses under the Contract have already reached the ceiling and the Contractor so requests.

SECTION 1.8

NOTICE (AUG 1954)

Where the Contract requires that notice be given to the other party, such notice must be given in writing to the address shown on this Contract's signature page. To notify OPM, the Contractor must write to the Contracting Officer, unless otherwise specified. The Contractor will have the right to change its address upon 3 months written notice to OPM.

SECTION 1.9

FEGLI PERFORMANCE STANDARDS (JUN 2012)

(a) The Contractor agrees to adhere to the following performance standards as part of the quality assurance program described in LIFAR 2146.270 and referenced in *Section 1.23 Quality Assurance Requirements*. For purposes of computing the annual service charge, the Contractor's performance shall be measured on a Contract Year basis.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(b) The Contractor's failure to meet the performance standards does not constitute a breach or default under the Contract. However, it will affect the computation of the annual service charge, as discussed in *Section 3.3, Service Charge*.

(c) OPM may revise the standards described in this Section 1.9 by providing written notice to the Contractor of such revised standards ("Revised Standards"). The Contractor shall be deemed to have accepted such Revised Standards and thereafter they shall form part of this Contract, unless the Contractor informs OPM of its objection to one or more provisions of such Revised Standards within 20 business days of receipt. In the event of such objection, OPM and the Contractor shall negotiate in good faith to agree on Revised Standards.

SECTION 1.10

CONTRACTOR DISASTER RECOVERY PLAN (JUN 2012)

(a) The Contractor shall maintain a disaster recovery plan for conducting business in the event of a disaster, the substance of which will be made available to OPM in summary form upon OPM's request.

(b) Activation of the plan shall be considered a significant event requiring notification to OPM in accordance with *Section 1.19 Notice of Significant Events*.

(c) If the plan is activated, the Contracting Officer and Contractor may mutually agree to a temporary revision of the Performance Standards. The Contractor must notify OPM within 5 business days of a disaster if it believes that such disaster will affect its ability to meet the Performance Standards. The Contractor will state the time period during which it requests revised Performance Standards to be in effect. The Contracting Officer will advise the Contractor in writing of acceptance of this temporary change in standards.

(d) The disaster recovery plan shall address:

(1) how the Contractor will continue critical business functions and processes during an extended interruption of normal business operations for reasons including, but not limited to:

(i) the loss of use of the Contractor's facilities and/or information technology infrastructure; and

(ii) the inability of significant numbers of Contractor staff to report to work due to a public health emergency or disaster (natural or man-made).

(2) how recovery procedures for critical business functions (i.e. system, network, communication, work area recovery) will work

(3) how the Contractor will resume normal business operations after an extended interruption has occurred.

(e) Critical business functions and processes the disaster recovery plan shall address, but are not limited to:

- (1) Claims payment process;
 - (2) Making living benefits determinations;
 - (3) Making request for insurance determinations;
 - (4) Responding to all inquiries, including electronic, telephone and written inquiries;
 - (5) Setting up of a secure backup site (hot/cold). A "hot work site" is a designated location to be used in the event of a disaster that is fully prepared for continuation of work to which the employees can go. A cold work site" is a designated location to use in the event of a disaster that is not fully prepared for continuation of work to which the employees can go; and
 - (6) Testing the backup site.
- (f) The Contractor must provide OPM with the following information:
- (1) A description of its disaster recovery plan;
 - (2) The Contractor's current state of readiness and the frequency of evaluations;
 - (3) The Contractor's work with its subcontractor on this issue;
 - (4) A timeline; and
 - (5) Any potential problem areas
- (g) Any material changes to the disaster recovery plan, such as a prime disaster recovery subcontract change, shall be reported to OPM.

SECTION 1.11 CORRECTION OF DEFICIENCIES (OCT 2005)

- (a) The Contractor will maintain sufficient financial resources, facilities, staff, and other necessary resources to meet its obligations under this Contract. If OPM reasonably determines that the Contractor does not meet its material obligations under this Contract, OPM will notify the Contractor in writing of the asserted deficiencies.
- (b) The Contractor agrees that, within 10 business days following receipt of such written notification, it will present detailed plans for correcting such deficiencies. These plans will be presented in a format prescribed by OPM. Pending submission or implementation of plans required under this Section, OPM will institute action as it deems necessary to protect the interests of Insured Persons, including, but not limited to:
- (1) Directing the Contractor to take corrective action; and
 - (2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge for the subsequent Contract period.
- (c) Before taking such action as described in paragraph (b), OPM will notify the Contractor and offer an opportunity to respond. If the Contractor does not respond to OPM's satisfaction, then the procedures described in paragraph (b) may be initiated.
- (d) The Contractor agrees that failure to submit or to diligently implement corrective action plans which are required under this Section constitutes sufficient grounds for termination of this Contract, pursuant to *Section 1.24, Renewal and Termination*.

SECTION 1.12 INFORMATION AND MARKETING MATERIALS (JUN 2012)

- (a) OPM will approve or cause to be produced appropriate document(s) or electronic media setting forth or summarizing the benefits under the FEGLI Program for distribution to Insured Persons. The production and distribution of such materials will be conducted at the sole

discretion of OPM. At the request of OPM, the Contractor will assist in, or be solely responsible for, the production and distribution of such materials. Expenses incurred by the Contractor will be excluded from any administrative cost ceiling applicable to this Contract unless otherwise expressly stated.

(b) The Contractor will not distribute or display marketing materials or other supplemental literature relating to the FEGLI Program in a Federal facility or arrange for the distribution of such documents by Federal agencies unless the documents have been reviewed and approved by OPM.

SECTION 1.13 REINSURANCE (JUN 2012)

(a) The Contractor will reinsure portions of the total amount of insurance under this Contract under conditions approved by OPM in accordance with the applicable provisions of the Act.

(b) The Contractor will maintain a current listing of participating reinsuring companies and their portions of FEGLI reinsurance. The Contractor will prepare and cause to be executed an agreement with each participating reinsurer. OPM must approve the format of this agreement. Contractor shall submit to OPM in writing any material changes to the reinsurance pool agreement and receive OPM's approval for such changes before finalizing such changes.

(c) The Contractor will provide annually to OPM a current listing of participating reinsurance companies.

SECTION 1.14 CONVERSION POOL (JUN 2012)

(a) The Contractor will maintain a conversion pool by which participating reinsurers may issue individual conversion policies, as specified in *Section 2.10, Termination of Coverage and Conversion Privilege*. The Contractor will prepare and cause to be executed an agreement with each participating conversion pool member. OPM must approve the format of this agreement. Contractor shall submit to OPM in writing any material changes to the conversion pool agreement and receive OPM's approval for such changes before finalizing such changes. The agreement will specify which types of policies are eligible to be included in the conversion pool and the rights and obligations of conversion pool members.

(b) Charges for excess mortality costs in connection with converted policies are as specified in *Section 3.7, Excess Mortality Costs*.

(c) The Contractor will provide annually to OPM a current listing of participating conversion companies.

SECTION 1.15 AGENTS; ALTERATIONS (OCT 2005)

(a) No agent or employee of the Contractor is authorized to alter or modify this Contract, to accept any payment from any Insured Person or claimant in respect of this Contract or to extend the due date of any payment for coverage under this Contract, to waive any coverage or options certified by OPM or any employing agency, to waive any notice or proof of claim required by

Regulations or this Contract, or to extend the date by which any such notice or proof must be submitted.

(b) No change in this Contract will be valid unless evidenced by (i) a change to the Act or Regulations; (ii) a written modification signed by the Contracting Officer and the Contractor; or (ii) a unilateral modification signed by the Contracting Officer and made in accordance with the provisions of *Sections 1.21, Changes, and/or 1.24, Renewal and Termination*.

SECTION 1.16

TIME LIMIT ON STARTING LAWSUITS (AUG 2004)

(a) No action at law or in equity may be brought to recover on this Contract regarding life insurance benefits unless brought within six years from the date of receipt by the Contractor of the written proof of claim required under this Contract or the date the claim is denied, whichever is later.

(b) No action at law or in equity may be brought to recover on this Contract regarding accidental death and dismemberment benefits before the expiration of sixty days after proof of claim has been filed in accordance with the requirements of this Contract or more than two years after the date the claim is denied, nor may such action be brought at all unless brought within two years from the expiration of the time within which proof of claim is required by the Contract.

SECTION 1.17

LIMIT ON LEGAL ACTIONS (JUN 2012)

In any action at law or in equity that relates to the FEGLI Program, the claimant will be limited in the amount of recovery to the benefit that would be payable under the FEGLI Program. No extra-contractual, punitive, compensatory, consequential damages, or attorneys' fees shall be recoverable under the FEGLI Program.

The term "benefit" is limited to:

- (a) The amount of insurance, if any, calculated in accordance with this Contract due to the Insured Person's death, terminal illness or dismemberment; or the death of the Insured Person's family member, and
- (b) Interest as specified in *Section 2.15, Interest Payable to Beneficiaries*, and
- (c) Post-judgment interest as provided in 28 U.S.C. § 1961.

SECTION 1.18

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (OCT 2005) (LIFAR 2152.203-70)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program must be truthful and not misleading and must present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees to use reasonable efforts to assure that agents selling its other products are aware of and abide by this provision. The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

SECTION 1.19
NOTICE OF SIGNIFICANT EVENTS (OCT 2005)
(LIFAR 2152.210-71)

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a "significant event" is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

- (1) Disposal of 25% or more of the Contractor's assets within a six-month period;
- (2) Termination or modification of any contract or subcontract, if such termination or modification might have a material effect on the Contractor's obligations under this contract;
- (3) Loss of 20% or more of FEGLI Program reinsurers in a contract year;
- (4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;
- (5) The withdrawal of, or notice of intent to withdraw, by any State or the District of Columbia, its license to do life insurance business or any other change of life insurance status under State law;
- (6) The Contractor's material default on a loan or other financial obligation;
- (7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;
- (8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;
- (9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;
- (10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or
- (11) Any written exceptions, reservations, or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an audit opinion on the annual financial report required by OPM for the FEGLI Program. (Accounting firm employees must audit the report in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM.)

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

- (1) Directing the Contractor to take corrective action; or
- (2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification when the amount of the subcontract or modification that is charged to the FEGLI Program contract exceeds \$550,000 and is at least 25% of the total cost of the subcontract.

SECTION 1.20

CONFIDENTIALITY OF RECORDS (OCT 2005)

(LIFAR 2152.224-70)

- (a) The Contractor will use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published in the *Federal Register* as a part of OPM's notice of systems of records.
- (b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:
- (1) As may be reasonably necessary for the administration of this contract;
 - (2) As authorized by the insured or his or her estate;
 - (3) As necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and
 - (4) As necessary to audit the contract.

SECTION 1.21

CHANGES (OCT 2005)

(LIFAR 2152.243-70)

- (a) Except as provided in paragraph (f) of this clause, the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
- (1) Description of services to be performed;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, or the Contractor's liability under this contract, whether or not changed by the order, the Contracting Officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and will modify the contract.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer has the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.
- (f) The Contracting Office shall not make any changes pursuant to paragraph (a) of this clause to conform this contract to any amendment in the LIFAR before the effective date of the amendment as provided for in LIFAR 2101.370.

SECTION 1.22
SUBCONTRACTS (OCT 2005))
(LIFAR 2152.244-70)

(a) The Contractor must notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds \$550,000 and is at least 25% of the total cost of the subcontract.

(b) The advance notification required by paragraph (a) of this clause includes the following information:

- (1) A description of the supplies or services to be subcontracted;
- (2) Identification of the type of subcontract to be used;
- (3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
- (4) The proposed subcontract price and the Contractor's cost or price analysis;
- (5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and
- (7) A negotiation memorandum reflecting—
 - (i) The principal elements of the subcontract price negotiations;
 - (ii) The most significant consideration controlling establishment of initial or revised prices;
 - (iii) The reason cost or pricing data were or were not required;
 - (iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation will identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor will obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification constitutes the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a Contractor team arrangement as defined in FAR subpart 9.6 and—

- (1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Office to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404-4(c) (4) (i). Any profit or fee payable under a subcontract will be in accordance with the provisions of *Section 3.12, Service Charge*.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

SECTION 1.23

QUALITY ASSURANCE REQUIREMENTS (OCT 2005)

(LIFAR 2152.246-70)

(a) The Contractor shall develop and apply a quality assurance program as directed by the Contracting Officer pursuant to LIFAR 2146.270.

(b) The Contractor must keep complete records of its quality assurance procedures and the results of their implementation and make them available to an authorized Government entity during contract performance and for 5 years after the end of the contract term to which the records relate.

(c) The Contracting Officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterward as the contract requires. The Contracting Officer or his or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

SECTION 1.24

RENEWAL AND TERMINATION (OCT 2005)

(LIFAR 2152.249-70)

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time in accordance with FAR Part 49 and FAR 52.249-8 for default by the Contractor. This contract terminates at the end of the grace period if the Government does not fund the LOC account for any of the premium due to the Contractor (see LIFAR 2149.002(a) (2)). However, the Contractor and OPM may agree to continue the contract. In addition, the Contractor agrees to reinstate the contract if termination:

(1) Arose out of the Government's inadvertent failure to fund the LOC account for the amount of the premium payment prior to the expiration of the grace period as defined in LIFAR

2102.101, and/or

(2) was due to circumstances beyond the Government's control, provided that the LOC account is funded in the amount of the premium payment due to the Contractor within 5 days after the expiration of the grace period. In the event of such reinstatement, OPM will equitably adjust the payments due under the contract to compensate the Contractor for any increased costs of performance that result from the Government's failure to fund the LOC account prior to the expiration of the grace period and/or such reinstatement.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract for Contractor's default or OPM's convenience, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, LIFAR 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237-70. The Contractor is not required to continue performance subsequent to OPM's failure to fund the LOC account for premiums due under paragraph (b) of this clause.

(e) After receipt of a termination notice, the prime Contractor will, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they relate to the performance of the FEGLI Program contract. The failure of the prime Contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

SECTION 1.25

CERTIFICATION BY FEGLI PROGRAM CONTRACTOR REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993) (LIFAR 2152.209-71)

(a) (1) The Contractor certifies, to the best of its knowledge and belief, that—

(i) The Contractor and/or any of its Principals—

(A) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have () have not (), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The Contractor has () has not (), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business

segment; and similar positions).

(3) This certification concerns a matter within the jurisdiction of an agency of the United States, and the making of a false, fictitious, or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

(b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

SECTION 1.26

CONTRACTOR'S KEY PERSONNEL (JUN 2012)

(a) For the purposes of this section, "key personnel" are the individual(s) who serve as the Contractor's primary contact(s) with OPM or have significant supervisory responsibility for the Contractor's performance of this Contract. These individuals shall be designated as "Key Personnel" in Appendix B.

(b) Prior to removing, replacing or diverting key personnel, the Contractor shall notify the Contracting Officer of the planned removal, replacement or diversion. This notification must include a description of the substitute personnel's qualifications and address the potential impact on contract performance. This notification must be no later than five (5) business days in advance of any planned removal, replacement or diversion of key personnel. Notwithstanding the foregoing, if the Contractor deems advance notice of the removal, replacement or diversion of key personnel impracticable under the circumstances, the Contractor shall notify the Contracting Officer with the required notification as indicated above within five (5) business days following such personnel action.

(c) In the event that key personnel voluntarily resign, retire or otherwise separate their employment from the Contractor, the Contractor shall notify the Contracting Officer within five (5) business days following receipt of the key personnel's notice of such action.

(d) In the event OPM determines that the performance of any assigned key personnel or any substitute(s) has not met the standards under LIFAR 2146.270 FEGLI Program Quality Assurance Requirements at any time during the life of the Contract, OPM reserves the right to request, in writing, a personnel replacement. OPM's written request shall include the reason for

requesting replacement personnel. The Contractor shall respond to OPM's request in writing within ten (10) business days. If after receiving the Contractor's response, OPM determines a personnel replacement is necessary, OPM shall receive qualified personnel replacement based on the Contractor's position requirements.

(e) The Contractor-supplied personnel are employees of the Contractor and under the administrative control and supervision of the Contractor. The Contractor, through its personnel, shall perform the tasks prescribed herein. The Contractor must select, supervise, and exercise control and direction over its employees and subcontractors under this Contract. OPM shall not exercise any supervision or control over the Contractor in its performance of contractual services under this Contract. The Contractor is accountable to OPM for the action of its personnel.

PART II-SERVICES

SECTION 2.1

LIFE INSURANCE BENEFITS (AUG 1954)

(a) The Contractor shall provide group life insurance, consisting of Basic, Option A (Standard Optional), Option B (Additional Optional), and Option C (Family Optional) insurance, and Accidental Death and Dismemberment insurance to eligible Insured Persons. Definitions of this insurance, amounts of insurance, effective dates of coverage, termination of coverage, and enrollment eligibility shall be as specified in the Act and Regulations and as supplemented by this Contract.

(b) The Contractor shall provide Living Benefits as specified in the Act and Regulations.

SECTION 2.2

EFFECTIVE DATES OF INSURANCE (APR 1981)

The Act, Regulations and this Contract specify an individual's eligibility and effective dates of insurance.

SECTION 2.3

AMOUNT OF INSURANCE (JUN 2012)

The amount of insurance payable shall be based on the insurance coverage certified by OPM and/or the appropriate Government Agency.

SECTION 2.4

CERTIFICATION OF COVERAGE (JUN 2012)

(a) OPM and other Government Agencies shall certify the Insured Person's Insurance in Force and Annual Rate of Basic Pay to the Contractor in a manner approved by OPM. After using reasonable diligence to ensure that the certification was properly completed, the Contractor shall pay Benefits in accordance with the information on that certification. The Contractor shall not accept a certification made in a manner not approved by OPM. If the Contractor suspects fraud in any certification received it should promptly notify the Contracting Officer.

(b) The Contractor shall rely on all certifications by OPM and other Government Agencies issued to verify an Insured Person's eligibility, Insurance in Force, and Annual Rate of Basic Pay consistent with the terms of this Section. Any erroneous payments or liabilities incurred in reliance on such written statements shall constitute a valid charge against the contract. However, the Contractor shall follow the procedures in *Section 2.7, Erroneous Payments*, to attempt to collect the erroneous payment.

SECTION 2.5

INTERPRETATIONS OF TERMS, CONDITIONS AND PROVISIONS (JUN 2012)

The Contractor shall apply the terms of this Contract consistent with the Act and the Regulations. The Contractor shall contact OPM in circumstances of ambiguity regarding the terms, conditions and provisions of this Contract as to the Benefits due to each Beneficiary.

SECTION 2.6

PAYMENT OF CLAIMS (APR 1981/JUN 2012)

(a) The Contractor shall pay the Insurance in Force (plus applicable interest) of the Insured Person based on receipt of satisfactory written proof. Satisfactory written proof consists of Government Agency or OPM certification of coverage (*Section 2.4, Certification of Coverage*), and a certified death certificate or other proof deemed satisfactory by the Contractor when a certified death certificate is not available. The Contractor shall use reasonable diligence to ensure that the proof is satisfactory. The Contractor's determination as to the entitlement to payment of Benefits is to be given full force and effect, unless it can be shown that the determination was arbitrary and capricious.

(b) The Contractor may pay the amount of Benefits (plus applicable interest without regard to any State law relating to the collection of taxes by any State. The Contractor may comply with any State law requiring that it give notice of any such payment it has made to any State tax authority. Payment of Benefits shall in no event subject the Contractor to any liability under any tax law of any State. Notwithstanding the above, nothing in this paragraph shall be construed to relieve any person or estate who receives payment of Benefits from compliance with any tax law of any State.

(c) When an Insured Person has Option C and predeceases any spouse or eligible child insured under Option C, and subsequently such spouse or eligible child dies within 31 days of the Insured Person's death, the Contractor shall pay Option C benefits to the estate of such spouse or eligible child.

(d) The Contractor shall not pay Benefits to any person (including an insured Employee, annuitant, or compensation under Option C), otherwise entitled, who is convicted of intentionally or wrongfully causing the death of an Insured Person or who has been determined in a civil proceeding to have intentionally or wrongfully caused the death of an Insured Person.

(1) The Contractor may bring an interpleader action to determine the proper beneficiary where there has been no conviction.

(2) If the Contractor or OPM determines that a claim has been paid erroneously for any reason, the Contractor shall take prompt and diligent action as described in *Section 2.7, Erroneous Payments*.

(e) The Contractor may request any additional information needed to comply with this Section and shall not pay Benefits until it is reasonably satisfied that payment of Benefits would not be in violation of this Section.

(f) The Contractor shall undertake reasonable efforts to locate Beneficiaries, including contacting surviving family members of the Insured Person to determine the whereabouts and contact information of any and all Beneficiaries.

SECTION 2.7**ERRONEOUS PAYMENTS (JUN 2012)**

(a) If the Contractor or OPM determines that a claim has been paid erroneously for any reason, the Contractor shall take prompt and diligent action as described in this Section. For an underpayment, the additional payment shall be made to the Beneficiary (ies) as described in *Section 2.12, Beneficiaries*. For an overpayment, the Contractor shall make a prompt and diligent effort to recover the erroneous payment, including any interest. The Contractor shall follow general business practices and procedures in collecting debts owed under the Federal Employees' Group Life Insurance Program, which may include practices that the Contractor, with OPM's approval, determines are in the best interests of the FEGLI Program to forego collection. Prompt and diligent effort to recover erroneous payments means that upon discovering or being notified that an erroneous payment exists, the Contractor shall

(1) Send a written notice of erroneous payment to the payee(s) that provides:

- (i) An explanation of when and how the Erroneous Payment occurred;
- (ii) Precise identifying information (e.g., name of Insured Person, date of death of Insured Person, date of claim received from Beneficiary, dollar amount paid erroneously, date paid, check number or retained asset account number, etc., as applicable);
- (iii) A request for payment of the debt in full; and
- (iv) An explanation of what may occur should the debt not be paid, including possible garnishment of wages for Federal employees and the use of collection agencies. The notice may also offer an installment option. In addition, the Contractor shall provide the debtor with an opportunity to dispute the existence and amount of the debt before proceeding with collection activities;

(2) After confirming that the debt still exists and the amount of the debt, send follow-up notices to the debtor, as appropriate and in accordance with the Contractor's internal debt collection procedures, if the debt remains unpaid and undisputed;

(3) After undertaking the actions described in the preceding two paragraphs, the Contractor may refer cases, when it is cost effective to do so, to a collection attorney or a collection agency if the debt has not been recovered. These additional collection efforts shall be in accordance with general business practices and procedures necessary to the collection of debts, including the commencement of legal proceedings.

(4) Make prompt and diligent effort to recover erroneous payments until the debt is paid in full, or determined to be uncollectible by the Contractor.

(5) Maintain records that document individual unrecovered erroneous payment collection activities for audit or future reference.

(6) At the request of OPM, the Contractor shall provide evidence that it has taken the steps enumerated above to promptly recover erroneous payments identified through the OPM audit process and monthly claims match.

(b) The Contractor may charge the Contract for benefit payments made erroneously but in good faith provided that it can document that it acted in accordance with subsection (a) of this Section.

(c) The amount credited to the Contract in respect of recovery of Erroneous Payments shall be the net amount remaining after deducting all legal or collection fees reasonably related to collecting such Erroneous Payments, unless such fees are otherwise charged to the Contract.

(d) All FEGLI benefit refunds and recoveries, including Erroneous Payment recoveries, must be accounted for in the FEGLI letter of credit account within 30 days after receipt by the Contractor.

SECTION 2.8

ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE (AUG 2004)

(a) Accidental Death and Dismemberment (AD&D) insurance is automatically extended to Employees insured for Basic insurance in the same amount of coverage as Basic insurance, excluding any Extra Benefit increased by an age multiplication factor. Employees insured for Option A insurance are also automatically insured for Accidental Death and Dismemberment insurance in the same amount of coverage as Option A.

(b) Accidental Death and Dismemberment benefits shall be paid when an eligible Employee sustains bodily injuries solely through violent, external, and accidental means and not more than one year thereafter suffers any of the losses specified in this Section as a direct result of such bodily injuries, and independently of all other causes. The Contractor shall pay the amount of insurance specified in this Section for such losses upon receipt by the Contractor of notice and satisfactory proof of the loss.

(c) However, AD&D benefits will not be paid if the death or loss in any way results from, is caused by, or is contributed to by:

- (1) the insured having physical or mental illness;
- (2) the diagnosis of or treatment of the insured's physical or mental illness;
- (3) ptomaine or bacterial infection of the insured; EXCEPTION: AD&D benefits will be paid if the loss is caused by an accidentally sustained external wound;
- (4) a war (declared or undeclared), any act of war, or any armed aggression against the United States in which nuclear weapons are actually being used;
- (5) a war (declared or undeclared), any act of war, or any armed aggression, or insurrection in which the insured was in actual combat at the time bodily injuries are sustained;
- (6) the insured committing suicide or attempted suicide;
- (7) the insured injuring him/herself on purpose;
- (8) illegal or illegally obtained drugs that the insured self-administered;
- (9) the insured operating any motorized vehicle while intoxicated, as defined by the laws of the jurisdiction in which the insured was operating the vehicle.

(d) If the Employee dies while insured for AD&D, the full amount of AD&D insurance in force on the date of Employee's death is payable. If the Employee has an accident while insured for AD&D but dies as a result of that accident after his/her AD&D coverage ends, the full amount of AD&D insurance in force on the date the AD&D coverage ended is payable.

(e) The full amount of Accidental Death and Dismemberment insurance in force on the Employee at the date of the Employee's accident shall be payable for any of the following losses:

- (1) Total and irrecoverable loss of sight of both eyes. Total and irrecoverable loss of sight means the absence of any usable vision, even if the insured is able to see light, hand movement or its functional equivalent; or
- (2) Loss of both hands by severance at or above the wrist joints or an equivalent loss as determined by the Contractor; or
- (3) Loss of both feet by severance at or above the ankle joints or an equivalent loss as determined by the Contractor; or

(4) Loss of one hand and of one foot by severance at or above the wrist and ankle joints, respectively or an equivalent loss as determined by the Contractor; or

(5) Such loss of one hand or of one foot together with total and irrecoverable loss of sight of one eye.

(f) One-half the amount of Accidental Death and Dismemberment insurance in force on the Employee at the date of the Employee's accident shall be payable for any of the following losses:

(1) Total and irrecoverable loss of sight of one eye. Total and irrecoverable loss of sight means the absence of any usable vision, even if the insured is able to see light, hand movement or its functional equivalent.

(2) Loss of one hand by severance at or above the wrist joint or an equivalent loss as determined by the Contractor; or

(3) Loss of one foot by severance at or above the ankle joint or an equivalent loss as determined by the Contractor; or

(g) For all such losses suffered by the Employee resulting from any one accident, no more than the full amount of Accidental Death and Dismemberment insurance is payable. The Contractor's payment of Accidental Death and Dismemberment insurance for loss of life shall discharge any liability with respect to all such other losses suffered by the Employee as a result of the same accident.

(h) The full amount of Accidental Death and Dismemberment insurance remains in force for an Employee who has received Benefits for the loss of one hand, or one foot, and/or sight in one eye as defined in this Section. However, the amount of such insurance payable for the subsequent loss of one hand, one foot, or sight in one eye as provided in this Section shall be one-half of such full amount for the same accident.

(i) The Contractor shall have the right and opportunity to designate a physician to examine the Employee, at the Employee's expense, when and so often as it may reasonably require for a pending AD&D claim, and also the right and opportunity to obtain an autopsy report in case of death if an autopsy has been performed and where it is not forbidden by law.

SECTION 2.9

CONTINUATION OF COVERAGE AFTER RETIREMENT OR DURING RECEIPT OF COMPENSATION (AUG 1954)

Annuitants and compensationers are eligible to continue FEGLI coverage or have their coverage reinstated after retirement or during receipt of compensation under the conditions and in the amounts specified in the Act and Regulations. The Insurance in Force upon the annuitant's or compensationer's death shall be certified to the Contractor by OPM.

SECTION 2.10

TERMINATION OF COVERAGE AND CONVERSION PRIVILEGE (APR 1981)

(a) The insurance on any Insured Person shall cease under the conditions specified in the Regulations. Benefits after termination of coverage are as specified in the Regulations.

(b) An Insured Person is entitled to a temporary extension of coverage to the extent specified in the Regulations.

(c) An Insured Person whose coverage has terminated is entitled, upon application within the times and under the conditions specified in the Regulations, to convert to an individual life

insurance policy. The policy is one customarily issued by the life insurance company selected by the Insured Person from among a listing supplied by the Contractor pursuant to subsection (g) below; except term insurance, universal life insurance, and any other form of life insurance with an indeterminate premium.

(d) The premium for such individual policy shall be the premium applicable to the standard underwriting classification of the insurance company issuing such policy and to the form and amount of the individual policy at the person's attained age (nearest birthday) at the date of issue of such individual policy.

(e) The amount of such individual policy shall be equal to or, at the option of the Insured Person, less than the amount of the Insured Person's life insurance on the date the life insurance ended.

(f) Payment of benefits under such individual policies shall be governed by the specific provisions of such individual policy. Exception: when an individual policy is issued after the death of the Insured Person, under conditions approved by OPM, payment shall be made to the Insured Person's Beneficiary of record under this Contract or otherwise as specified in *Section 2.12, Beneficiaries*.

(g) The Contractor shall maintain a current listing of companies that have been accepted by the Contractor and by OPM as eligible to issue individual policies in accordance with this Section and have agreed with the Contractor to do so. The Contractor shall provide a copy of the listing to eligible persons who request conversion information. The Contractor shall ensure that all companies issuing individual policies are made aware of their responsibility to accept all conversions without requiring evidence of insurability of the eligible person.

(h) The Contractor shall pay Benefits under this Contract if any Insured Person dies within 31 days after his or her group coverage terminated, even if the Insured Person had continued none, some or all coverage into retirement/compensation or converted his or her coverage to an individual life insurance policy. It does not matter whether the Insured Person had already paid any premiums under that converted policy. However, any such premium paid under a conversion policy shall be refunded and the conversion policy voided. If an Insured Person's coverage under FEGLI terminates, and that person again becomes insured under FEGLI during the 31 days following the end of that coverage, only the higher of the two amounts of coverage shall be paid (a person cannot be insured "twice" under FEGLI).

SECTION 2.11 ASSIGNMENT OF LIFE INSURANCE (OCT 1994)

Each eligible Insured Person may irrevocably assign his or her life insurance coverage as specified in the Act and Regulations. Validity of assignments is controlled by the Act and Regulations.

SECTION 2.12 BENEFICIARIES (AUG 2012)

(a) Designations of Beneficiaries and the order of precedence for payment to Beneficiaries shall be as specified in the Act and Regulations. The Contractor shall rely on information provided by OPM and/or any employing agency with respect to Beneficiary designations.

(b) In no event shall payment be made to an Insured Person's estate or an executor or administrator of his or her estate unless the Contractor receives either:

(1) A certified copy of an order of a court of competent jurisdiction appointing the executor or administrator of the estate; or

- (2) Proof that the requirements for payment under applicable law have been met.
- (c) The Contractor, may at its discretion, deem a claim for payment of Benefits on behalf of a Beneficiary referenced in (b) to be abandoned because "proof of due diligence" was not provided to the Contractor. If a claim is deemed to be abandoned, payment of the abandoned amount shall be made to either:
- (1) The other designated Beneficiaries, if any, in equal shares; or
 - (2) According to the order of precedence specified in the Act, if there are no other designated Beneficiaries.
- (d) "Proof of Due Diligence" means competent evidence that both:
- (1) written documentation that a petition for a Court Order appointing the executor or administrator of the estate was filed in a court of competent jurisdiction within the later of one year after the Insured Person's death or six months after a claim was submitted on behalf of the estate or executor or administrator of the estate; and
 - (2) written documentation that all actions necessary to secure the required Court Order were taken in a timely and appropriate manner.
- (e) The Contractor shall not pay Benefits to any person who both signed as a witness and was designated as a Beneficiary on the same form. When the Insured Person has designated more than one Beneficiary and one of them has signed as a witness to the Insured Person's signature, Benefits shall not be paid to the witnessing Beneficiary, and that Beneficiary's share shall be distributed equally to the remaining Beneficiary(ies). When the witness is the only designated Beneficiary, the designation of beneficiary form will be deemed invalid and Benefits shall be paid in accordance with the most recent designation of beneficiary that is valid. If no such designation exists, Benefits shall be paid according to the order of precedence specified in the Act.
- (f) If more than one Beneficiary is designated, the share of any Beneficiary who shall (i) predecease the Insured Person or (ii) become disqualified from receiving his or her share, shall be distributed equally among the other designated Beneficiaries, if any, or according to the order of precedence specified in the Act if there are no other designated Beneficiaries.
- (g) If for any reason the latest designation of beneficiary is determined to be invalid under the Act and Regulations and this Contract, the next prior valid designation of beneficiary will be given full force and effect. If no such prior designation form exists, the proceeds will be distributed according to the order of precedence specified in the Act.
- (h) The use of a mailing service receipt is acceptable evidence to determine that a designation form was received earlier than indicated by the Government Agency.
- (i) A copy of a designation form which was validated (properly signed and dated by a Government Agency official) may be accepted when the original designation is not found in the Insured Person's file.
- (j) Benefits shall not be paid to a minor directly. The age of adulthood for the FEGLI Program is 18, unless the state in which the minor lives has established a lower age of adulthood. In that case, the lower age applies. Parents do not automatically qualify as guardians of their children's estates. A court must appoint a guardian and grant to the guardian the authority to collect money on behalf of the child. The guardian then can submit a claim to the Contractor with proof of the guardianship, and Benefits will be paid to the guardian on behalf of the minor.
- (1) If the Beneficiary is a minor and the share of the amount of life insurance or Accidental Death and Dismemberment insurance which he or she is entitled to receive has a net value over \$10,000, such amount may be paid only to the court-appointed guardian or court-

appointed conservator of the minor's estate or property. If there is no court-appointed guardian or court-appointed conservator, the person responsible for the care and wellbeing of the minor child must elect that FEGLI benefits be held in an interest bearing account on the minor's behalf. The minor's caretaker must complete a minor contract election form to have the interest bearing account created. The minor's caretaker does not need any type of legal appointment to sign the minor contract election form.

(2) If the net value is \$10,000 or less, such amount will be paid to the minor's parent(s) on behalf of such minor rather than to a guardian appointed by the court, provided the parent(s) agree(s) in writing to meet all of the following conditions:

(i) The parent(s) will hold such amount for the sole use and benefit of the minor until the minor reaches majority; and

(ii) The parent(s) will account to the minor for such amount when the minor reaches majority; and

(iii) The parent(s) will indemnify the Contractor in the event the minor, when he or she reaches majority, brings any legal action against the Contractor challenging in any way the Contractor's payment of such amount to the parent(s).

If the parent(s) do not agree in writing to the three conditions, the Contractor will make payment to any court-appointed guardian or court-appointed conservator. If there is no court-appointed guardian or court-appointed conservator, the person responsible for the care and wellbeing of the minor child must elect that FEGLI benefits be held in an interest bearing account on the minor's behalf. The minor's caretaker must complete a minor contract election form to have the interest bearing account created. The minor's caretaker does not need any type of legal appointment to sign the minor contract election form.

(k) The Contractor shall not honor designations of beneficiary signed by a court-appointed guardian or conservator or by a person holding a power of attorney or by anyone other than the Insured Person or assignee.

(l) The Contractor shall honor any letter or written statement as a valid designation only if such document meets all the requirements of a valid designation as specified in the Act and Regulations and has not been superseded by a subsequent valid designation.

(m) The Contractor shall honor valid Court Orders as specified in the Act and Regulations.

(n) Any designation of beneficiary shall automatically cease to be effective as specified in the Regulations, unless the Employee's life insurance is continued or reinstated in accordance with the provisions of *Section 2.9, Continuation of Coverage after Retirement or During Receipt of Compensation*, except that such designation will remain in effect with respect to an individual policy issued after the death of the Employee.

(o) The Contractor shall accept photocopies of documents in accordance with the procedures prescribed by OPM.

SECTION 2.13 BLOCKED BENEFICIARIES (JUN 2012)

Life insurance proceeds which are payable to blocked Beneficiaries, defined as citizens or permanent residents of blocked countries as specified in title 31 of the Code of Federal Regulations (CFR), part 211 and title 31 CFR chapter V, or to persons specified pursuant to Executive Order 13224, the U.S. Patriot Act (P.L. 107-56) and any implementing Regulations, shall be retained by OPM for credit to the Employees' Life Insurance Fund until the

Beneficiary's country is removed from the listing of blocked countries or until the Beneficiary is no longer a citizen or permanent resident of that country or any other blocked country. Interest that otherwise would accrue shall not be paid to the Beneficiary for the period that the Beneficiary was blocked from receiving payment due to this Section. Should the Beneficiary die while still blocked from payment, the proceeds shall become a part of the Beneficiary's estate and disposition shall be made accordingly, without regard to any other Beneficiary.

SECTION 2.14 EQUITABLE ENTITLEMENT (JUN 2012)

(a) If, within 2 years after the death of the Insured Person, no claim for payment has been filed and neither OPM nor the Contractor have received notice that a claim will be made, payment will be made to the claimant determined by the Contractor or OPM to be equitably entitled.

(1) In each instance where the equitable entitlement amount payable is over \$5,000, the Contractor shall forward to OPM any information it has gathered on claimants potentially entitled to unclaimed Benefits under the equitable entitlement provision of the Act. OPM shall make each determination on equitable entitlement based on the claimant's proof of his or her out-of-pocket expenses made on behalf of the insured that have not been reimbursed by any other source, and shall provide the Contractor with authorization for the Contractor's payment to the claimant.

(2) In such cases where the amount payable is \$5,000 or under, the Contractor shall make the determination, based on the same requirements as specified in (1).

(3) The Contractor is required to send OPM equitable entitlement information for amounts under \$5,000 if requested by the Contracting Officer.

(b) If within the applicable time frames specified in the Act, the appropriate office receives more than one valid equitable entitlement claim, payment will be made in the order received. The total payment on all valid equitable entitlement claims cannot exceed the amount of Benefits payable.

SECTION 2.15 INTEREST PAYABLE TO BENEFICIARIES (FEB 2012)

(a) In addition to the amount of life insurance and Accidental Death and Dismemberment insurance (if payable), the Contractor shall pay interest to the Beneficiary (ies). The interest rate payable under this Contract shall be the interest at the FEGLI DSI Rate. Such interest shall accrue from the date of death of the Insured Person to the date of payment of Benefits. However:

(1) No interest shall be payable on claims under Accidental Death and Dismemberment insurance for any loss other than loss of life; and

(2) No interest shall be payable for periods in excess of two years or when payment has been prevented pursuant to Regulations or OPM direction.

(b) Interest paid pursuant to this Section shall be considered part of Benefits paid to the Beneficiary. If it is determined that such Benefits constitute an Erroneous Payment, the amount of interest paid shall also constitute an Erroneous Payment and be subject to collection under the same condition as the balance of the Benefits.

(c) Not less than 30 days before the Contractor effects a change in the Contractor DSI Rate:

(1) The Contractor shall give written notice to the Contracting Officer including an explanation of, and basis for the change in the Contractor DSI Rate; and

(2) Upon receipt of the notice, the Contracting Officer shall accept or reject a change in the FEGLI DSI Rate, shall issue a revised Appendix A stating the FEGLI DSI Rate and effective date of the FEGLI DSI Rate change, if any, and shall provide notice to the Contractor of any revised Appendix A.

SECTION 2.16 METHOD OF PAYMENT (JUN 2012)

(a) The Contractor may pay Benefits by a negotiable check to the Beneficiary(ies) for claims less than \$5000 and must pay Benefits in this manner when requested by the Beneficiary(ies) for claims of any amount.

(b) As approved by the Contracting Officer, the Contractor may provide arrangements whereby Benefits are paid in a manner other than by a negotiable check to Beneficiary(ies) for claims more than \$5000 either upon the election of the Beneficiary(ies), or automatically in the event an election is not made. These arrangements include the issuance of draft books to Beneficiary(ies) so they may access their insurance proceeds in a retained asset account.

(c) The Claim for Death Benefits form shall contain an election form and information concerning such modes of payment to the Beneficiary(ies). Payment of Benefits pursuant to subsections (a) and (b) of this Section shall be considered payment in full under this Contract.

SECTION 2.17 AGE (AUG 1954)

If the amount of insurance applicable to an Insured Person is affected by a misstatement of age, the amount of insurance on such Insured Person shall be adjusted to the amount to which such Insured Person would have been entitled at his or her correct age. However, the Contractor is entitled to rely on any written statements by OPM, other Government Agencies, or any Insured Person regarding an Insured Person's age or date of birth. Any liability or damage incurred by the Contractor in reliance on information furnished by OPM or other Government Agencies under this Section shall be a valid charge against the Contract. However, the Contractor shall follow the procedures in *Section 2.7, Erroneous Payments*, to attempt to collect the erroneous payment.

SECTION 2.18 CONTINUITY OF SERVICES (OCT 2005) (LIFAR 2152.237-70)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. The Contractor further recognizes that upon contract expiration or termination, including termination by the Contractor, including termination by the Contractor for OPM's failure to make timely premium payments, a successor, either the Government or another contractor, may continue them. The Contractor agrees to furnish phase-in training and exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in and phase-out services for up to 10 months after this contract expires; and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in and phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in and

phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor must allow as many experienced personnel as practicable to remain on the job during the transition period to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also must, except if prohibited by applicable law, disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor must release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor will be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) in accordance with the provisions of the administrative expense ceiling in the clause at 2152.231-70(b)(2)(ii)(B) and a risk charge or a service charge (profit) not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit will be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration. OPM will pay an incentive amount to the Contractor not to exceed the pro rata risk or service charge for the continuity of services period, if the Contractor has performed exceptionally during the transition period to a new Contractor. The Contracting Officer uses the weighted guidelines method described in LIFAR 2115.404-71 in determining the incentive amount.

PART III-PAYMENTS, CHARGES, AND ACCOUNTING

SECTION 3.1

PREMIUMS (JUN 2012)

(a) The Contractor shall propose FEGLI Program Premiums no later than 20 business days before the beginning of the Contract Year. The Premium proposal must be based on reasonable and good faith actuarial estimates consistent with the requirements of LIFAR 2115.402 and must include a break-out of costs for claims and administrative expenses. The Premium proposal must also include an estimate of the amount the Contractor determines is needed based on state regulated Risk Based Capital requirements that are required at the end of the calendar year. The proposal must be approved by the Contracting Officer.

(b) Premiums payable to the Contractor shall be adjusted annually for each Contract Year, subject to the reconciliation described in *Section 3.5, Program Equity; Dividends; Transfers from the Fund*. Failure of the Contractor and OPM to agree on a Premium rate in writing before the start of a renewal period shall result in the continuation of the Premium from the previous Contract Year.

(c) The estimate of costs referenced in Section 3.16, *Payments*, shall include amounts for benefit costs, administrative expenses, excess mortality charges, taxes, contributions to the Special Reserve, and the risk or service charge.

(d) Withdrawals from the Automated Standard Application for Payment (ASAP) - referred to as the Letter of Credit (LOC) will be made on a checks-presented basis or a claims-paid basis in accordance with the guidelines set forth in LIFAR 2132.170(b). The prorated monthly drawdowns of the annual payments for the service charge and administrative expenses will be exempt from the checks-presented payment method.

SECTION 3.2

ADMINISTRATIVE EXPENSE CEILING (OCT 1991)

(a) This Contract is subject to an administrative expense ceiling which is determined before the start of the Contract Year per section 315, *Accounting and Allowable Cost*. The ceiling applies only to that work specifically set forth in Part II-Services of this Contract and excludes costs for all other work. The administrative expense ceiling is not applicable to any changed or additional work requested by OPM during performance of the Contract.

(b) For those years in which an administrative expense ceiling applies, the ceiling shall exclude costs such as, but not limited to, the following:

- (1) Open season enrollment;
- (2) Preparation and/or distribution of materials for the FEGLI Program made at OPM's request;
- (3) Any other tasks not specifically identified in Part II Services of this Contract, i.e., any efforts not strictly for the purpose of this Contract.

SECTION 3.3

SERVICE CHARGE (OCT 1991)

- (a) A service charge shall be payable to the Contractor, except in those contract years in which a risk charge is paid. In accordance with LIFAR 2115.404-70(a), a risk charge shall be paid when the balance in the Employees' Life Insurance Fund is no larger than 5 times annual claims.
- (b) The service charge shall be determined by the profit analysis factors stated in LIFAR 2115.404-71 and shall be agreed upon by the Contractor and OPM. The Contractor shall propose a service charge no later than January 31 of each contract year.
- (c) Failure of the Contractor and OPM to agree on a service charge in writing before the start of a contract year shall result in the continuation of the service charge determined for the previous contract year. Once agreement is reached between the Contractor and OPM, the service charge will be adjusted.

SECTION 3.4

SPECIAL RESERVE (OCT 1978)

- (a) The Contractor shall maintain a Special Reserve as required by 5 U.S.C. § 8712.
- (b) If the Special Reserve is positive, such amount shall be held by the Contractor and used for charges under this Contract only.
- (c) If and when this Contract terminates (the policy discontinues), after all accrued charges (including adequate provision for adjustment in charges previously made for excess mortality costs) have been paid, the balance of the Special Reserve shall be paid to OPM as a return of Premium, for credit to the Employees' Life Insurance Fund subject to the right of the Contractor to make such return in equal monthly installments over a period of not more than two years.

SECTION 3.5

PROGRAM EQUITY; DIVIDENDS; TRANSFERS FROM THE FUND (JUN 2012)

- (a) At the end of each Contract Year, the Contractor shall make an accounting entry to adjust its Program equity (the net of total Program assets less total Program liabilities) to equal a zero balance.
- (b) To achieve a zero equity balance, the Contractor shall recognize either an additional liability ("Dividends Payable" and/or an increase to the Special Reserve), where there would have been a positive Program equity balance, or an additional asset ("Receivable from Employees' Life Insurance Fund" and/or a decrease to the Special Reserve), where there would have been a negative Program equity balance.
- (c) If Premiums paid to the Contractor during a Contract Year exceed claims costs, including benefits and Contractor's administrative expenses (as outlined in 3.15 *Accounting and Allowable Costs*), then the Contracting Officer may require, upon determining that the Special Reserve has attained an amount estimated to make satisfactory provision for adverse fluctuations in future charges under the Contract, that any further excess of Premiums over claims costs be recognized as "Dividends Payable" and either paid to OPM or credited as an increase to the Special Reserve, up to the amount of such excess. The Contracting Officer shall notify the Contractor of such determination in writing no later than 20 business days after receipt of the Annual Financial Report. Contractor shall make such payment no later than 45 business days after the receipt of

the Annual Financial Report. The Contractor may not alter the Program equity requirement in subparagraph (a) of this section due to such payment of a dividend to OPM.

(d) If claims costs, including any benefits and/or Contractor's administrative expenses (as outlined in 3.15 *Accounting and Allowable Costs*) that were charged to the Special Reserve, exceed Premiums paid to Contractor during a Contract Year and exhaust the Special Reserve, OPM shall pay the excess as additional Premium under this Contract from the Employees' Life Insurance Fund. To the extent that Contractor has advanced claims costs, including benefits and Contractor's administrative expenses, payable from the Employees' Life Insurance Fund, OPM shall reimburse Contractor for any such advanced funds. Such reimbursement shall be recognized as a "Receivable from Life Insurance Fund" and such amount will be made available to the Contractor's LOC account no later than 45 business days after receipt of the Annual Financial Report. Payment for claims costs, including benefits and Contractor's administrative expenses, exceeding the amount in the Employees' Life Insurance Fund shall be the responsibility of the Contractor and the Program's reinsurers. The Contractor may not alter the Program equity requirement in subparagraph (a) of this section due to the reimbursement of receivable for claim costs that exceed Premium paid in a Contract Year.

(e) OPM represents that it has the legal authority to withdraw funds due under this Contract from the Employees' Life Insurance Fund.

SECTION 3.6

ANNUAL FINANCIAL REPORT; REPORT ON AGREED-UPON AUDIT PROCEDURES; OTHER FINANCIAL REPORTING REQUIREMENTS (MAR2004)

- (a) The Contractor shall prepare an audited Annual Financial Report covering the FEGLI Program for the Contract Year and any other reasonable financial information required by the Contracting Officer.
- (b) The Contractor must prepare the Annual Financial Report in accordance with the accounting standards and requirements stipulated in an OPM-issued Reporting and Audit Guide ("the Guide").
- (c) The Contractor must submit the Annual Financial Report so as to be received by OPM by the date required in the Guide.
- (d) The audit of the Annual Financial Report, plus all reporting and auditing performed must comply with the requirements in the Guide.
- (e) The Guide contains authoritative guidance on the requirement for the application of additional financial reporting and audit procedures. The Contractor shall require that an independent accounting firm perform and report to the Contracting Officer on the application of these audit procedures.
- (f) The Contractor must ensure that the public accounting firms with which it contracts for audits of FEGLI accounts are registered with the Public Company Accounting Oversight Board (PCAOB).
- (g) Failure to provide the needed documents as required by the Guide will be reflected in the Contractor Performance element of the service charge.

SECTION 3.7

EXCESS MORTALITY COSTS (JUN 1975)

(a) Charges for excess mortality costs to be expected under individual conversion policies issued pursuant to *Section 2.10, Termination of Coverage and Conversion Privilege* and in accordance with the conversion pool agreements, shall be as specified below.

(b) A charge, differentiating between Basic life insurance and Optional life insurance issued under any such policy which is attributable to the employee's life insurance will be made as of the date of issue of each such policy. Such charge will be subject to periodic adjustment, on the basis of actual and projected mortality experience under such individual policies during the ten years following issue of any such policy. The rates at which initial charges are made, and the methods for subsequent adjustments in such charges, will be determined from time to time by mutual agreement between the Contractor and OPM.

SECTION 3.8

REVIEW OF INVESTMENT STRATEGY (JUN 2012)

(a) The Contractor shall submit a description of its investment strategy for FEGLI funds to OPM on or before the start of each Contract Year, if there is a change in the strategy from the prior Contract Year. The report shall include available alternatives to the investment strategy, consistent with *Section 3.12, Investment Income*.

(b) The Contractor shall report the results of its FEGLI investment performance to the Contracting Officer annually with the Annual Financial Report.

(c) The Contractor shall be allowed to charge a reasonable investment management fee to the Contract upon request to and approval by the Contracting Officer. If the Contractor wishes to charge a fee, it must propose such fee for the Contracting Officer's approval no later than 20 business days before the beginning of the Contract Year. Once approved, that fee shall be charged each year until a new fee is approved, unless otherwise agreed to by the Contractor and Contracting Officer.

SECTION 3.9

FUNDS OFFSET (JUN 2012)

Per the Debt Collection Improvement Act of 1996, if the Contractor incurs a debt to another Federal entity, the Contractor's drawdowns from the LOC account may be subject to offset by the U.S. Department of the Treasury. Should the Contractor's LOC account drawdown be reduced by Treasury offset, the Contractor must repay this amount to the FEGLI Program from another source or book-of-business. The Contractor shall not use FEGLI monies to compensate for this loss. The Contractor shall report the amount that is owed for this purpose in the Contractor's Annual Financial Report and disclose information on Treasury Offsets as directed by the Contracting Officer.

SECTION 3.10
AUDIT RESOLUTIONS (JUN 2012)

(a) When OPM's Office of Inspector General (OIG) issues a Draft Report of findings to the Contractor, the Contractor must respond with all available, accurate and relevant documentation to validate or invalidate the findings. This must be done within the timeframe specified in the OIG Draft Report transmittal letter. The Contractor shall promptly begin reconciling findings and not wait until the receipt of the Final Report to address disagreement with any findings previously communicated in the Draft Report.

(b) OPM expects to fully resolve audits within 180 days of issuance of the final report. To enable this, Contractors must expeditiously tender all documentation necessary for resolution of the audit not later than 120 days after the date of the final audit report. This includes overpayment recoveries, full documentation of the Contractor's position for findings being contested, evidence supporting due diligence assertions, and support for all other pertinent issues which OPM must consider, as appropriate. Fully supported requests for an extension will be evaluated by the Contracting Officer on a case-by-case basis.

SECTION 3.11
TAXPAYER IDENTIFICATION NUMBER; TREASURY OFFSET PROGRAM (OCT 2005) (LIFAR 2152.204-70)

(a) Definitions.

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Contractor is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Contractor in reporting income tax and other returns. The TIN is the Contractor's Social Security Number.

(b) The Contractor must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Contractor is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Contractor's failure or refusal to furnish the information will result in payment being withheld until the TIN is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Contractor's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN: _____

(e) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Other _____

(f) Common parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

- Name and TIN of common parent:

Name _____

TIN _____

SECTION 3.12

INVESTMENT INCOME (OCT 2005) (LIFAR 2152.210-70)

(a) The Contractor must invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income.

However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraph (a) or (b) of this clause, the Contractor must pay to OPM the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. Failed to comply with paragraph (a) or (b) of this clause means:

(1) Making any charges against the contract which are not actual, allowable, allocable, or reasonable; or

(2) Failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, un-cashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d) (1) Investment income lost as a result of unallowable, un-allocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of:

- (i) The date the amounts are returned to OPM;
- (ii) The date specified by the Contracting Officer; or
- (iii) The date of the Contracting Officer's Final Decision.

(2) Investment income lost by the Contractor as a result of failure to credit income due under the contract or failure to place funds on hand in income-producing investments and accounts must be paid from the date the funds should have been invested or appropriate income was not credited and will end on the earlier of:

- (i) The date the amounts are returned to OPM;
- (ii) The date specified by the Contracting Officer; or
- (iii) The date of the Contracting Officer's final decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid after the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614-1].

SECTION 3.13**CONTRACTOR RECORDS RETENTION (OCT 2005) (LIFAR 2152.215-70)**

Notwithstanding the provisions of FAR 52.215-2(f), "Audit and Records--Negotiation," the Contractor must retain and make available all records applicable to a contract term that support the annual financial report for a period of 5 years after the end of the contract term to which the records relate. Claim records must be maintained for 10 years after the end of the contract term to which the claim records relate. If the Contractor chooses to maintain paper documents in electronic format, the electronic version must be an exact replica of the paper document.

SECTION 3.14**FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 2005) (LIFAR 2152.216-71)**

- (a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge. OPM will pay the Contractor the service charge as specified in a letter from the Contracting Officer.
- (b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

SECTION 3.15**ACCOUNTING AND ALLOWABLE COST (OCT 2005) (LIFAR 2152.231-70)****Accounting and Allowable Cost (OCT 2005)****(a) Annual financial report.**

(1) The Contractor must prepare annually a financial report summarizing the financial operations of the FEGLI Program for the previous contract year. This report will be due to OPM in accordance with a date established by OPM's requirements.

(2) The Contractor must have the most recent financial report for the FEGLI Program audited by an independent public accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The audit must be performed in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM. The report by the independent accounting firm on its audit must be submitted to OPM along with the annual financial report.

(3) Based on the results of either the independent audit or a Government audit, the FEGLI contract may be:

- (i) Adjusted by amounts found not to constitute chargeable costs; or
- (ii) Adjusted for prior overpayments or underpayments.

(b) Definition of costs.

(1) A cost is chargeable to the contract for a contract term if it is:

- (i) An actual, allowable, allocable, and reasonable cost;
- (ii) Incurred with proper justification and accounting support;
- (iii) Determined in accordance with subpart 31.2 of the Federal Acquisition

Regulation (FAR) and subpart 2131.2 of the Federal Employees' Group Life Insurance Acquisition Regulation (LIFAR) applicable on October 1 of each year; and

(iv) Determined in accordance with the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs will be classified in accordance with the following criteria:

(i) Benefits. Claims costs consist of payments made and costs incurred (including delayed settlement interest) by the Contractor for life insurance, accidental death and dismemberment insurance, excess mortality charges, post-mortem conversion charges, and conversion policies on behalf of insured persons, less any overpayments recovered (subject to the terms of LIFAR 2131.205-3), refunds, or other credits received.

(ii)(A) Administrative expenses. Administrative expenses consist of chargeable costs as defined in paragraph (b)(1) of this clause incurred in the adjudication of claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, service charges to reinsurers, the cost of investigation and settlement of policy claims, the cost of maintaining records regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(B) Administrative expense ceiling. Each year an administrative expense ceiling for the following contract year is calculated based on the prior contract year's administrative expense ceiling, adjusted by the percentage change in the average monthly consumer Price Index for All Urban Consumers for the preceding 12 months. Administrative expenses are reimbursed up to the administrative expense ceiling or actual costs, whichever is less. Both parties will reexamine the base, including the prior year's actual expenses, at the request of either OPM or the Contractor. Within the administrative expense ceiling is a separately negotiated limit for indirect costs that may be charged against the ceiling for the contract year. The Contractor agrees to provide annually to the Contracting Officer a detailed report of direct and indirect administrative costs which form the basis for determining the limit on indirect costs for the following contract year. During a continuity of services period, OPM and the Contractor will negotiate a one-time increase in the administrative expense ceiling to cover phase-in/phase-out costs. Costs that exceed the revised ceiling must be submitted by the Contractor, in writing and in advance of their incurrence, to the Contracting Officer for approval.

(iii) Investment income. Investment income represents the amount earned by the Contractor after deducting chargeable investment expenses. Investment expenses are those chargeable contract costs, as defined in paragraph (b)(1) of this clause, which are attributable to the investment of FEGLI funds.

(c) *Certification of Annual Financial Report.*

(1) The Contractor must certify the annual financial report in the form set forth in paragraph (c)(2) of this clause. The certificate must be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and must be returned with the annual financial report.

(2) The certification required must be in the following form:

Certification of Annual Financial Report

This is to certify that I have reviewed this financial report and, to the best of my knowledge and belief, attest that:

1. The report was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract year in conformity with those guidelines;
2. The costs included in the report are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);
3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the report.

Contractor Name: _____

(Chief Executive Officer for FEGLI Operations)

Date signed: _____

(Chief Financial Officer for FEGLI Operations)

Date signed: _____

(Type or print and sign)

SECTION 3.16

PAYMENTS (OCT 2005) (LIFAR 2152.232-70)

- (a) OPM will make available to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost, a fixed premium once per month on the first business day of the month. The premium is determined by an estimate of costs for the contract year as provided in Section 3.1 Premiums and is re-determined annually by mutual agreement of OPM and the Contractor. In addition, an annual reconciliation of premiums, benefits, and other costs is performed, and additional payment by OPM or reimbursement by the Contractor is paid as necessary.
- (b) If OPM fails to fund the Letter of Credit (LOC) account for the full amount of premium due by the due date, a grace period of 31 days will be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued. The contract will continue in force during the grace period.
- (c) If OPM fails to fund the LOC account for any premiums within the grace period, the contract may be terminated at the end of the 31st day of the grace period in accordance with LIFAR 2149.002(a)(2). If during the grace period OPM presents written notice to the Contractor that the contract is to be terminated before the expiration of the grace period, the contract will be terminated the later of the date of receipt of such written notice by the Contractor or the date

specified by OPM for termination. In either event, OPM will be liable to the Contractor for all premiums then due and unpaid.

(d) In accordance with LIFAR 2143.205 and LIFAR 2252.243-70, *Changes*, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer will make an equitable adjustment to the payments under this contract.

(e) In the event this contract is terminated in accordance with LIFAR part 2149, the special contingency reserve held by the Contractor will be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

SECTION 3.17

NON-COMMINGLING OF FUNDS (OCT 2005) (LIFAR 2152.232-71)

(a) The Contractor must maintain FEGLI Program funds in such a manner as to be separately identifiable from other assets of the Contractor.

(b) The Contractor may request a modification of paragraph (a) of this section from the Contracting Officer. The modification must be requested, and approved by the Contracting Officer, in advance of any change, and the Contractor must demonstrate that accounting techniques have been established that clearly measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records must be provided as supporting schedules to the annual financial report.

SECTION 3.18

APPROVAL FOR ASSIGNMENT OF CLAIMS (OCT 1993) (LIFAR 2152.232-72)

(a) The Contractor shall not make any assignment of FEGLI Program funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI Program funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

PART IV—STANDARD FAR CLAUSES

This section of the contract contains important FAR clauses that are required to be listed in their entirety in the FEGLI contract by the LIFAR. However, these are NOT the only FAR clauses that are applicable to this Contract. The entire FAR, as periodically updated and amended, applies unless specifically excluded in certain situations by the LIFAR. If a FAR clause is not included in the matrix, it does not mean the clause has no applicability to the FEGLI contract. The LIFAR makes this clear in section 2101.103 Applicability: "The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. Chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program."

SECTION 4.1

DEFINITIONS (JULY 2004) (FAR 52.202-1)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (1) The solicitation, or amended solicitation, provides a different definition;
- (2) The contracting parties agree to a different definition;
- (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

SECTION 4.2

GRATUITIES (APR 1984) (FAR 52.203-3)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled—

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

SECTION 4.3

COVENANT AGAINST CONTINGENT FEES (APR 1984) (FAR 52.203-5)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) Bona fide agency, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

SECTION 4.4

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006) (FAR 52.203-6)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

SECTION 4.5
ANTI-KICKBACK PROCEDURES (OCT 2010) (FAR 52.203-7)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from –

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor

withhold, from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order the monies withheld under division (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

SECTION 4.6

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007) (FAR 52.203-12)

(a) *De finitions.* As used in this clause—

Agent means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

Full cooperation—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

- (i) Exercise due diligence to prevent and detect criminal conduct; and
 - (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
 - (3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—
 - (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
 - (B) A violation of the civil False Claims Act (31 U.S.C. 3729–3733).
 - (ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.
 - (iii) If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.
- (c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:
 - (1) An ongoing business ethics awareness and compliance program.
 - (i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
 - (ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.
 - (2) An internal control system.
 - (i) The Contractor's internal control system shall—
 - (A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and
 - (B) Ensure corrective measures are promptly instituted and carried out.
 - (ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729–3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

SECTION 4.7

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010) (FAR 52.209-6)

(a) Definition. Commercially available off-the-shelf (COTS) item, as used in this clause—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds \$30,000 in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

SECTION 4.8

AUDIT AND RECORDS--NEGOTIATION (OCT 2010) (FAR 52.215-2)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.*—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the

Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

SECTION 4.9

PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011) (FAR 52.215-10)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract; or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the certified cost or pricing

data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data which were incomplete, inaccurate, or noncurrent.

SECTION 4.10

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010) (FAR 52.215-12)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the

judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data--Modifications.

SECTION 4.11

PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) (FAR 52.215-15)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which certified cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

SECTION 4.12

FACILITIES CAPITAL COST OF MONEY (JUNE 2003) (FAR 52.215-16)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

SECTION 4.13

WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (FAR 52.215-17)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

SECTION 4.14

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JULY 2005) (FAR 52.215-18)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

SECTION 4.15

UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011) (FAR 52.219-8)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the

extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract--

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(5) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business

concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page
at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm;
or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sbagov.

SECTION 4.16

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) (FAR 52.222-1)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

SECTION 4.17

CONVICT LABOR (JUNE 2003) (FAR 52.222-3)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

SECTION 4.18

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT- OVERTIME COMPENSATION (JULY 2005) (FAR 52.222-4)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

SECTION 4.19

PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) (FAR 52.222-21)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

SECTION 4.20

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999) (FAR 52.222-22)

The offeror represents that-

- (a) It has () has not () participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It has () has not () filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

SECTION 4.21

AFFIRMATIVE ACTION COMPLIANCE (APR 1984) (FAR 52.222-25)

The offeror represents that (a) it has developed and has on file () has not developed and does not have on file (), at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

SECTION 4.22

EQUAL OPPORTUNITY (MAR 2007) (FAR 52.222-26)

(a) *De finition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (I) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or

subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect

and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

SECTION 4.23

NOTIFICATION OF VISA DENIAL (JUNE 2003) (FAR 52.222-29)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

SECTION 4.24

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2010) (FAR 52.222-35)

(a) Definitions. As used in this clause—

All employment openings means all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting 3

days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Armed Forces service medal veteran means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

Disabled veteran means—

(1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Executive and senior management means—

(1) Any employee—

(i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(iii) Who customarily and regularly directs the work of two or more other employees; and

(iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

Other protected veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified disabled veteran means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

Recently separated veteran means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the US military, ground, naval or air service.

(b) General.

(1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action

to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

- (i) Recruitment, advertising, and job application procedures.
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
- (iii) Rate of pay or any other form of compensation and changes in compensation.
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- (v) Leaves of absence, sick leave, or any other leave.
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
- (vii) Selection and financial support for training, including apprenticeship, and on the job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
- (viii) Activities sponsored by the Contractor including social or recreational programs.
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR part 60-300, subpart C.

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

(2) The Contractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of

subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(e) Postings.

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include—

(1) Withholding progress payments;

(2) Termination or suspension of the contract; or

(3) Debarment of the contractor.

(g) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

SECTION 4.25

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010) (FAR 52.222-36)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without

discrimination based upon their physical or mental disabilities in all employment practices such as -

- (i) Recruitment, Advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

SECTION 4.26

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2010) (FAR 52.222-37)

- (a) Definitions. As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause 52.222-35.
- (b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
- (1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.
- (2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and
- (3) The maximum number and the minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.
- (c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."
- (d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.
- (e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—
- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due, or
- (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.
- (g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

SECTION 4.27

DRUG-FREE WORKPLACE (MAY 2001) (FAR 52.223-6)

- (a) Definitions. As used in this clause—

"Controlled substance" means a controlled substance in schedules I through V of section 202 or the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11-1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an officer/contractor that has no more than one employee including the officer/contractor.

(b) The Contractor, if other than an individual, shall--within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Made a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

SECTION 4.28

AUTHORIZATION AND CONSENT (DEC 2007) (FAR 52.227-1)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

SECTION 4.29

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (FAR 52.227-2)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall

be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

SECTION 4.30

INSURANCE-LIABILITY TO THIRD PERSONS (MAR 1996) (FAR 52.228-7)

(a) (1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed--

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for--

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amount available in the Employees' Life Insurance Fund. Nothing in this contract shall be construed as implying that the Government will make additional funds available later or that Congress will appropriate funds later sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of--

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
- (iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall--

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

SECTION 4.31

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984) (FAR 52.232-9)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to--

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this

limitation is inappropriate.

SECTION 4.32

INTEREST (OCT 2010) (FAR 52.232-17)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from

the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

SECTION 4.33

ASSIGNMENT OF CLAIMS (JAN 1986) (FAR 52.232-23)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C.3727, 41 U.S.C. 15 (hereafter referred to as the Act), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

SECTION 4.34

PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (OCT 2003) (FAR 52.232-33)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers.*

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

- (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

SECTION 4.35

DISPUTES (JUL 2002) (ALTERNATE D) (FAR 52.233-1)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

SECTION 4.36

NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) (FAR 52.242-1)

(a) Notwithstanding any other clause of this contract--

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

- (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

SECTION 4.37

PENALTIES FOR UNALLOWABLE COSTS (MAY 2001) (FAR 52.242-3)

- (a) Definition. "Proposal," as used in this clause, means either--
- (1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--
 - (i) Relates to any payment made on the basis of billing rates; or
 - (ii) Will be used in negotiating the final contract price; or
 - (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).
- (c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--
- (1) The amount of the disallowed cost allocated to this contract; plus
 - (2) Simple interest, to be computed--
 - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
 - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).
- (g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

SECTION 4.38
BANKRUPTCY (JUL 1995) (FAR 52.242-13)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

SECTION 4.39
COMPETITION IN SUBCONTRACTING (DEC 1996) (FAR 52.244-5)

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

SECTION 4.40
GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES
(AUG 2010) (FAR 52.245-2)

- (a) This Government Property listed in paragraph (e) of this clause is furnished to the Contractor in an "as-is, where is" condition. The Government makes no warranty regarding the suitability for use of the Government property specified in this contract. The Contractor shall be afforded the opportunity to inspect the Government property as specified in the solicitation.
- (b) The Government bears no responsibility for repair or replacement of any lost, stolen, damaged or destroyed Government property. If any or all of the Government property is lost, stolen, damaged or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.
- (c) Unless the Contracting Officer determines otherwise, the Government abandons all rights and title to unserviceable and scrap property resulting from contract performance. Upon notification to the Contracting Officer, the Contractor shall remove such property from the Government premises and dispose of it at Contractor expense.
- (d) Except as provided in this clause, Government property furnished under this contract shall be governed by the Government Property clause of this contract.
- (e) Government property provided under this clause:

SECTION 4.41

INSPECTION OF SERVICES--FIXED PRICE (AUG 1996) (FAR 52.246-4)

- (a) Definitions. Services, as used in this clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

SECTION 4.42

LIMITATION OF LIABILITY--SERVICES (FEB 1997) (FAR 52.246-25)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.
- (b) the limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term Contractor's managerial personnel, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of -
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

SECTION 4.43

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003) (FAR 52.247-63)

(a) *Definitions.* As used in this clause—

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State reasons]:

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

SECTION 4.44

**TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
(MAY 2004) (FAR 52.249-2)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items

authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted—
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and

expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

SECTION 4.45

DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984) (FAR 52.249-8)

- (a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—
- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
 - (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).
- (2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- (b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated; and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as manufacturing materials in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.
- (f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing

materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the government in this clause are in addition to any other rights and remedies provided by law or under this contract.

SECTION 4.46

EXCUSABLE DELAYS (APR 1984) (FAR 52.249-14)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. Default includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

SECTION 4.47

GOVERNMENT SUPPLY SOURCES (AUG 2010) (FAR 52.251-1)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be *Government-furnished property*, as distinguished from *Government property*. The provisions of the clause entitled "Government Property," at 52.245-1, shall apply to all property acquired under such authorization.

SECTION 4.48
ALTERATIONS IN CONTRACT (APR 1984) (FAR 52.252-4)

Portions of this contract are altered as follows:

SECTION 4.49
AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984) (FAR 52.252-6)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of (DEVIATION) after the date of the clause.
- (b) The use in this solicitation or contract of any Federal Employees' Group Life Insurance Federal Acquisition Regulation (48 CFR Chapter 21) clause with an authorized deviation is indicated by the addition of (DEVIATION) after the name of the regulation.

SECTION 4.50
SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010) (FAR 52.244-6)

- (a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

- (c) (i) The Contractor shall insert the following clauses in subcontracts for commercial items

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter I (41 U.S.C. 251 note), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (DEC 2010) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 \$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a))
 (vi) 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010)
 (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)(E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) [Reserved].

(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
 (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

SECTION 4.51

NOTIFICATION OF EMPLOYEE RIGHTS UNDER NATIONAL LABOR RELATIONS ACT (DEC 2010) (FAR 52.222-40)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

SECTION 4.52

CENTRAL CONTRACTOR REGISTRATION (APR 2008) (FAR 52.204-7)

(a) Definitions. As used in this clause—

“Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

“Registered in the CCR database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective award shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and ZIP Code.

(iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

SECTION 4.53

CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) (FAR 52.203-13)

(a) Definitions. As used in this clause--

Agent means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

Full cooperation--

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require--

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

- (i) Conducting an internal investigation; or
- (ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a division, or business segment; and similar positions).

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

- (i) Have a written code of business ethics and conduct;
- (ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

- (i) Exercise due diligence to prevent and detect criminal conduct; and
- (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

- (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial

item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of

Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

SECTION 4.54

EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (FAR 52.222-54)

(a) Definitions.

As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee--

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall--

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of --

(i) All new employees. (A) Enrolled 90 calendar days or more.

The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the

contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees.

The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of--

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee--

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that--

(1) Is for--(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

APPENDIX A

Fegli DELAYED SETTLEMENT INTEREST RATE

for the Federal Employees' Group Life Insurance (Fegli) Program

(Metropolitan Life Insurance Company)

CONTRACT NO. 17000-G

Effective for Dates of Death on or after February 1, 2012

(a) Pursuant to Section 2.15 *Interest Payable to Beneficiaries*, the Fegli Delayed Settlement Interest Rate (Fegli DSI Rate) to be paid by Insurance Company commencing on the effective date above shall be:

0.5%

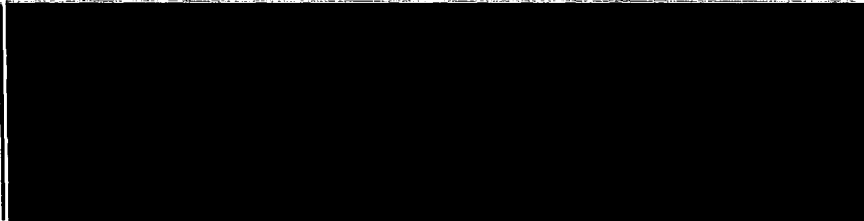
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Fegli-2012

EXHIBIT A

APPENDIXB

CONTRACTOR'S KEY PERSONNEL



B

FEGLI-2012

EXHIBIT A